

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5b

Date of Meeting August 11, 2009

DATE: July 10, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Senior Manager, Seaport Environmental Programs
Kathy Bahnick, Environmental Program Supervisor, Seaport Environmental Programs

SUBJECT: Four Professional Services Contracts that Support Investigations for the Lower Duwamish Waterway (LDW) and Harbor Island superfund sites.

ACTION REQUESTED:

This memorandum requests Port Commission approval for the Chief Executive Officer to execute amendments to the following professional service contracts that support the investigations at the above mentioned sites. This request is to increase the duration and maximum dollar amounts of the contracts, in order to continue the ongoing work in support of the following Superfund investigations: Lower Duwamish (LDW) Remedial Investigation (RI) and the Feasibility Study (FS); T117¹ Engineering Evaluation/Cost Analysis (EE/CA); and the East Waterway² (EWW) supplemental Remedial Investigation and Feasibility Study (sRI/FS). The contracts listed below are all part of this request:

- | | | |
|--------------------------|------------|------------|
| • Windward Environmental | LDW RI | P-00305189 |
| • AECOM | LDW FS | P-00314929 |
| • Anchor Environmental | EWW sRI/FS | P-00313669 |
| • Windward Environmental | T117 EE/CA | P-00309966 |

The amendments are necessary to provide for additional time and money in the contracts needed to complete the various investigations that the consultants have been hired to perform. The amendments exceed 50 percent of the accumulative value of the initial contracts, and, in accordance with RCW 53.19.060, this memo constitutes notification to the Commission.

¹ T117 is one of the early action areas for the Lower Duwamish Superfund site.

² The East Waterway (EWW) is an operable unit of the Harbor Island Sediments Superfund site

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BACKGROUND

For the EWW, LDW and T117 investigations, the Port functions as the contracting agent for a group of potentially responsible parties (PRPs) (i.e. governments and private parties that signed on to the Administrative Orders) under cost sharing agreements that were approved by Commission. The contracts support the investigative work required under Administrative Orders (AOCs) that the Port and the other PRPs have signed with the U.S. Environmental Protection Agency (EPA). The Commission authorized the signature of each of these AOCs via separate actions.

Each AOC contains a general outline of a scope of work. The scope of work for each contract is tied to the general scope of work that is required by the AOC. However, most of the specific defined tasks were identified later, during the stages of workplan development and data gaps identification, which occurred after the consultant was hired to perform the general scope.

The work on these four contracts is still ongoing, and any proposal to change consultants would need to be coordinated and jointly approved by our partners, who have approved the use of the current consultants, and who are also bound by the stringent deadlines imposed in the AOC.

SYNOPSIS

These four contracts support Superfund projects managed under the environmental reserve program. These contracts were entered into before CPO-1 was passed, and for the most part, the associated Commission memos and Request for Qualifications were silent on the length of time or dollar amount needed to perform the work. The procurements were structured as requests for qualifications due to the nature of supporting work on Superfund sites. That is, the consultants were selected based on their qualifications and experience in this type of work.

Because these complex investigations occur in phases that are sequentially negotiated and approved by the regulatory agencies, the full cost of any particular stage of work is not known until the previous stage of the work has been approved. In the past, we have managed this uncertainty through a two step process: annual Commission review of the project budgets, and annual Commission authorization to renew the contracts (through the environmental reserve programmatic authorization process).

To bring these procurements in line with current procedures and avoid the problems associated with the annual renewal of contracts, Port staff recommends that we manage these contracts in a new way that is consistent with Resolution No. 3605 and CPO-1. With Commission approval, these contracts will be amended to reflect the full cost and time needed to complete the entire scope of work of the investigation, using best current estimates. The work performed through

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these contracts will be managed through individual service directives which will be tied to the approved budget for individual projects/sites.

Seaport Environmental consulted with CPO to determine whether these contracts could be extended. After reviewing the procurement files, CPO concurs with this request.

LDW Remedial Investigation, P-00305189 (Windward Environmental)

This contract was procured in 2000. The solicitation document did not specify a dollar value limitation or time limitation. The scope of work was to provide advice and assistance related to federal superfund and sediment clean up in the Duwamish Industrial Waterway and Elliot Bay. The scope also includes work to review and comment on changes to regulations affecting contaminated sediments, and evaluation of contaminated sediments.

The Port anticipates that the work will be completed by 2012, when EPA issues a Record of Decision (ROD). The consultant has produced both the draft and draft final Remedial Investigation (RI). Work remaining is to finalize the RI and to perform any new RI tasks requested by EPA or Ecology through Record of Decision (ROD) negotiations. The majority of work on this contract has been completed. We propose to increase the total contract amount by only 3%, but it is important to have the consultant on-board through the ROD to make any changes to the RI as required by the agencies.

Accordingly, staff is requesting authorization to extend the current contract until December 2012 and add \$0.5 Million to complete the RI.

LDW Feasibility Study, P-00305189 (AECOM)

This contract was procured in 2004. The scope of work included completing the LDW FS, from developing the work plan to preparing the final FS document. The solicitation document did not specify a dollar value limitation or time limitation.

The Port authorized work to begin in April of 2004. The Port anticipates that the work will be completed by 2012 when the ROD for the Lower Duwamish Waterway Superfund site is reached. The consultant has produced the Draft FS. The remaining work consists of producing the 2nd and final drafts of the FS, as well as any additional FS tasks required by the agencies through ROD negotiations.

Accordingly, the Port is requesting authorization to extend the current contract until December 31, 2012 and add \$7.019 Million to complete the FS, for a total of \$13.5M.

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East Waterway sRI /FS, P-00313669 (Anchor Environmental)

This contract was procured in 2006. The scope of work includes all work to complete the East Waterway RI/FS, including developing a work plan and completing the sRI/FS and ROD negotiation. The solicitation document did not specify a dollar value limitation and indicated that the remedial investigation would be completed in 2009.

This work is ongoing and the consultant is still performing services related to the East Waterway RI/FS. The scope of work for this project is driven by the EPA and has taken more time and effort than was originally anticipated. Currently, we anticipate an EPA ROD in 2012.

Accordingly, the Port is requesting authorization to extend the current contract until December 31, 2013 and add \$4.3 Million to complete the sRI/FS.

T117, P-00309966 (Windward Environmental)

This contract was procured in 2003. The scope of work was to perform all work necessary in the draft statement of work for T117, including data gap analysis, biological assessments, draft and final EE/CA, and design and long-term monitoring for the non-time critical removal action. The general scope has not changed, but has become better defined through negotiations with the EPA. The solicitation document did not specify a dollar amount. Regarding timeframe, the solicitation indicated that the goal was to implement the removal activity beginning in 2004, or as otherwise approved by the EPA.

The Consultant is still performing services related to the T117 EE/CA, including recent data gap efforts, draft EE/CA comment and review and final EE/CA production.

Accordingly, the Port is requesting authorization to extend the current contract until December 31, 2011 and add \$0.75 M to the contract.

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PROJECT SCOPE OF WORK AND SCHEDULE

Current Status

Site	Phase of Work	Joint	Consultant	Current Contract Amount (Millions)	Contract Start Date	Current End Date
Lower Duwamish	RI	Yes	Windward Env.	\$17.869	3/2000	12/31/2009
Lower Duwamish	FS	Yes	AECOM – ENSR	\$6.481	4/2004	12/31/2009
East Waterway	sRI/FS	Yes	Anchor Env.	\$7.200	11/2006	12/31/2009
T117	EE/CA	Yes	Windward Env.	\$2.650	5/2003	12/31/2009

Proposed Changes

Site	Phase of Work	Consultant	Proposed Increase	Proposed Amended Not to Exceed amount (Millions)	Proposed End Date
Lower Duwamish	RI	Windward Env.	\$0.5	\$18.369	12/31/2012
Lower Duwamish	FS	AECOM – ENSR	\$7.019	\$13.5	12/31/2012
East Waterway	sRI/FS	Anchor Env.	\$4.3	\$11.5	12/31/2013
T117	EE/CA	Windward Env.	\$0.75	\$3.4	12/31/2011

ALTERNATIVES CONSIDERED/RECOMMENDED ACTION

1. Undertake a full procurement process to enter into a series of Category III contracts to replace the four existing contracts. The problem with this alternative is that these projects, as well as the originally solicited scopes of work, are all midway through, the consultants in place are deeply familiar with all of the studies and the draft reports (they have produced). Replacing the contracts to take over investigations, studies and analysis that are mid way in progress would create significant problems with getting the work

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done. It would almost certainly result in a failure to meet regulatory deadlines. This approach could result in leaving the Port open to an EPA enforcement action. This could also cause problems with our cost sharing partners, as it also could open them up to enforcement action, and they might balk at the additional cost to procure and bring new consultants up to speed on the projects. This is not the recommended alternative.

2. Modify the existing contracts as identified in this memo. **This is the recommended alternative.**
3. Conduct the activities using Port resources, without outside consultant assistance. There are insufficient staff resources and expertise to conduct these environmental management tasks without consultant and laboratory support. Under the existing MOAs, our partners have to agree on the consultant performing this work. It is highly likely that they would not accept this approach. This is not the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate

The cost estimates for the contract extensions are based on current knowledge of the sites and regulatory comments. The estimates may increase due to regulatory requirements for additional investigation or analysis. The requested extension of these contracts will not increase project costs.

Source of Funds

Funds for the expenditure required will come from the Environmental Reserves.

ENVIRONMENTAL SUSTAINABILITY/COMMUNITY BENEFITS

Elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater and sediment is not only required by state and federal law, it is the hallmark of responsible environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve. These detailed studies are the critical first step in creating a cleanup plan approved by EPA and Ecology for cleanup of these sites.

PREVIOUS COMMISSION ACTION

Since 1993 the Port Commission has, through a series of commission actions and annual project-wide authorizations, authorized expenditures under Environmental Reserves funding sources to perform the actions described above.

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On August 24, 1999, the Port Commission approved the purchase and sale agreement for the acquisition of the Malarky Asphalt Property at a cost of \$176,400 and implementation of required environmental cleanup measures on adjoining Port property at a cost not to exceed \$800,000.

On March 14, 2000, the Port Commission approved the 1) expenditure of \$1,000,000 in funds which had been previously reserved for aquatic sediment management; and 2) the Managing director, Marine Division, to enter into a contract with Windward Environmental Inc. to provide a variety of services to assist the Port in participating in the development and implementation of federal and state laws and regulations relating to the disposition of contaminated aquatic sediments.

On June 12, 2001, the Port Commission authorized 1) expenditure of \$750,000 in funds previously reserved for aquatic sediment management; and 2) Managing Director, Seaport Division, to execute an Administrative Order on Consent (AOC) with the Environmental Protection Agency (EPA) for additional sRI/FS work in the East Waterway portion of the Harbor Island Sediments Superfund site and revise the existing contract with Windward Environmental, Inc. to provide a variety of services to assist the Port in responding to the AOC.

On June 11, 2002, the Port Commission approved to spend \$1,500,000 previously reserved for aquatic sediment management and to revise the existing contract with Windward Environmental, Inc to provide services required by the Environmental Protection Agency's Order on Consent to continue work on the Lower Duwamish Sediments Superfund site and the East Waterway Sediment Operable Unit of the Harbor Island Superfund Site

On August 24, 2004, the Port Commission approved execution of the Memorandum of Agreement between the Port and the City of Seattle for Malarky Early Action Area.

On October 11, 2005, the Port commission approved execution of: 1) Administrative Settlement Agreement and Order on Consent for Removal Action T-117 Early Action Area; and, 2) Administrative Settlement Agreement and Order Consent for the T-117 Upland Investigation.

On March 14, 2006, the Port Commission approved executing the Memorandum of Agreement between the Port, the City of Seattle and King County to perform the East Waterway Operable Unit of the Harbor Island Superfund sitesRI/FS.

On June 27, 2006, the Port Commission: 1) approved execution of Administrative Settlement Agreement and Order on Consent for Time Critical Removal Action in the T-117 Upland Area; 2) directed staff to develop a work plan to expand the cleanup options in the T-117 Upland area and 3) amended the 2006 project-wide authorization expenditure in the amount of \$6,000,000.

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On July 25, 2006, the Port Commission approved the CEO to execute the Administrative Settlement Agreement and Order on Consent for an sRI/FS for the East Waterway Operable Unit of the Harbor Island Superfund site issued by the United States Environmental Protection Agency.

On September 25, 2007, the Port Commission authorized the CEO to: 1) approve the amended Statement of Work to the Administrative Settlement Agreement and Order on Consent for Removal Action T-117 Early Action Area (issued by the EPA, December 2005); and 2) execute the First Amendment to the Memorandum of Agreement with the City of Seattle regarding cost-sharing to conduct this Work