PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA **Item No.** 6a

Date of Meeting November 30, 2009

DATE: November 17, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Charlie Sheldon, Managing Director, Seaport Division
Nora Huey, Chief Procurement Officer, Capital Development Division

SUBJECT: A Competitive Exemption for the Contract with Herbert Engineering Corporation for the Green Gateway Study under RCW 53.19.020(5)

ACTION REQUESTED:

Commission determination that the competitive solicitation process is not appropriate or cost-effective and that the contract with Herbert Engineering Corporation is therefore exempt from the requirements of RCW 53.19.020(5) so that Herbert Engineering may continue to develop the Green Gateway Study for a period of three years during which, under existing authority and limitations, the Chief Executive Officer may enter into service agreements with Herbert Engineering as required.

BACKGROUND:

In 2008 the Seaport Division initiated an analysis of the carbon footprint (fuel consumption for the sea voyage and land leg of each route) of several supply chains from Asia to United States markets. The ship engine and its fuel consumption is the major component of the carbon footprint of any supply chain from Asia to North America because of the long ocean distances required. The Seaport Division retained Herbert Engineering Corporation, a ship design, research and analysis, naval architecture, and engineering firm supporting a wide range of ship-owners, operators, and charterers because of their proprietary databases regarding ship propulsion characteristics.

Herbert worked with their databases regarding marine engines, power curves, fuel consumption, and operating characteristics to calculate the carbon footprint of moving containers from three Asian ports – Shanghai, Hong Kong and Singapore – through several North American gateways (Prince Rupert, Seattle, Oakland, Los Angeles/Long Beach, Houston, Savannah, Norfolk, and New York) to Chicago, Columbus and Memphis. The analysis looked at different ship sizes and various routes, including passages through the Suez and Panama Canals. Also included were carbon impacts from port operations, train routes, and truck routes.

This is the first study ever conducted that looks at the entire supply chain with a focus on the sea voyage element. When the study was completed in the spring of 2009, the results confirmed that cargoes through Seattle to these inland destinations have a lower carbon footprint than other ports.

The study clearly demonstrates that U.S. West Coast ports are superior to all water services through the Panama or Suez Canals to the U.S. Gulf or East Coast ports for cargoes from Asia, despite the long transcontinental rail connections required. This study was peer reviewed before publication by academic experts and also by two Class One railroads, and has since has been widely examined throughout industry. The Green Gateway Study is now the best practice standard for total supply chain carbon footprint analysis and has been a key element of the Port of Seattle marketing "brand" since its announcement last spring.

CURRENT SITUATION:

In September 2009 under the Port of Seattle's leadership, the six West Coast ports (Seattle, Tacoma, Portland, Oakland, Los Angeles and Long Beach) banded together and collaborated to develop a marketing plan in the face of competition from Canada and all water service to the U.S. East Coast. This effort – the West Coast Collaborative –introduced the collaboration at the World Shipping Summit in Qingdao, China November 12-13, 2009. This collaboration will now continue at two major industry conferences (Trans-Pacific Maritime Conference March 1-2, 2010, and Retail Industry Leaders Association February 23-24, 2010). A key aspect of this effort includes expanding the carbon footprint analysis from a Seattle to West Coast-wide focus.

In addition, since the report was produced in the spring of 2009, customers and industry stakeholders have asked for additional analysis:

1) Add a few more U.S. destination markets (New York, Norfolk and Atlanta);
2) Include slower steaming times to accommodate an industry trend toward "slow steaming," which saves on fuel consumption;
3) Consider different vessel capacity utilizations, to allow comparison of ships filled at 80-90 percent capacity with ships filled at lower capacity;
4) Use Herbert's proprietary data bases to develop an actual carbon calculator tool that can be used by possible cargo customers to verify and test the carbon footprint of different routings and trade lanes; and
5) Look more closely at cargo shipments including truck deliveries up to 300 miles.

JUSTIFICATION FOR THE EXEMPTION FROM COMPETITIVE SOLICITATION (RCW 53.19.202(5):

The contract with Herbert Engineering for the additional services described in this memo is subject to Chapter 53.19 RCW, which requires "open competition for all personal service contracts entered into by port districts unless specifically exempted under this Chapter [53.19]." Unless this contract falls under one of the five exemptions in RCW 53.19.020, this contract, which expired in July 2009, would be subject to "competitive solicitation" – defined as "a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration."

RCW 53.19.020 lists five exemptions from competitive solicitation. The fifth exemption is for "[o]ther contracts or classes or groups of contracts exempted from the competitive solicitation process by the commission when it has been determined that a competitive solicitation process is not appropriate or cost-effective." RCW 53.19.020(5).

For the Herbert Engineering contract to fall under the exemption in RCW 53.19.020(5), the Commission must make a reasoned determination that the competitive solicitation process would not be appropriate or cost effective to obtain the services that Herbert Engineering provides. In making the determination as to whether the contract is exempt from competitive solicitation requirements, the Commission can avoid acting arbitrarily and capriciously by noting and discussing relevant facts and circumstances.

Herbert Engineering was retained November 3, 2008, (Contract 5-0031573) for a sum up to $50,000. Herbert was initially retained because only this firm had both the proprietary data bases concerning vessel operating characteristics and the expertise to develop and refine the carbon footprint methodology. Herbert completed the initial work for a total cost of $23,500, and in the spring of 2009 the "Green Gateway Study" was announced. The Port would have been interested in pursuing additional refinements in the study, but due to other demands on staff time, budget reductions and staff layoffs, this contract expired in July 2009 although less than half of the originally authorized amount was expended.

Since the contract expired, the West Coast Ports Collaborative has been established with specific marketing needs based on an expanded Green Gateway Study. A new contract is needed with Herbert to conduct the additional work identified above and possibly further refinements in the near future. A competition waiver is justified because Herbert has proprietary and unique databases which support the original study and which are needed to support additional work building upon that study. The study as it exists today is unique and has been reviewed and confirmed by industry experts. Any other firm wishing to do this work would have to start from scratch, develop a new methodology, find new sources of data, and most importantly then make sure that the analysis and methods were exactly matched to the existing information now out in the industry as the "Green Gateway" study. This would be much more expensive than continuing to work with Herbert and would also take many months to complete, missing the deadlines established with the West Coast Ports Collaborative. In order to maintain the brand, continuity and meet the marketing need to have additional data available by these critical conferences in 2010, our recommended approach is to retain Herbert to build on the existing methodology and data sources already established and held by Herbert.

It has been recognized that the widening of the Panama Canal in 2014 represents a threat to all West Coast ports and that this carbon footprint analysis offers a significant counter to the arguments from Gulf and East Coast ports that all-water services are more energy efficient. A multi-year campaign will be required to counter these perceptions. For this reason, a competition exemption for three years has been requested to enable Herbert to add additional sectors and analyses as requested by industry. The initial service agreement with Herbert will be for a sum not to exceed $ 50,000. If, during the coming three years, additional work by Herbert expands to require Commission authorization, i.e., if the total contract amount for Herbert including funds expended to date will exceed $ 300,000, consistent with Resolution No. 3605, Commission authorization will be requested.