

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6b

Date of Meeting June 1, 2010

DATE: May 14, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Senior Manager
Roy Kuroiwa, Senior Environmental Program Manager
Anne Porter, Capital Project Manager

SUBJECT: Request for Procurement Authorization - Consultant Support for
Terminal 117 Cleanup

Estimated Cost of this Procurement: \$2,300,000

Source of Funds: Tax Levy (Environmental Reserves)

ACTION REQUESTED:

Request authorization for the Chief Executive Officer to execute a Category III professional services contract to provide consultant services and support for planning and pre-design; design services, construction and monitoring support, and post-construction monitoring expected to be required by a pending Environmental Protection Agency (EPA) Administrative Settlement Agreement and Order on Consent (“Pending 2010 ASAOC”) at the T-117 Early Action Area (EAA) cleanup site. (Funding for this work has already been authorized, and was included in the Commission’s 2010 environmental reserve spending authorization, approved on November 30, 2009). The consultant will be selected through a competitive process.

SYNOPSIS:

This memo requests authorization for procurement of consultant support services needed for planning, design and implementation support activities (e.g., construction documentation and performance monitoring) at the T-117 EAA cleanup site, which is part of the Duwamish Superfund site. Contamination at the site is primarily from polychlorinated biphenyls (PCBs). An asphalt shingle plant, which operated on the property for decades, is the most likely source of the PCB contamination. The Port previously cleaned up parts of the site in 1999 and 2006. This authorization continues the Port's plan to clean up T-117. The overall goal of the T-117 cleanup is to significantly reduce or eliminate exposure to contamination and allow a full range of future site uses, including industrial/commercial operations, public access and habitat restoration. The City of Seattle will be contributing to the cost of cleanup, in addition to Department of

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 2 of 8

Ecology grant funding under the Model Toxics Control Act. The Port's Environmental Settlement fund will be used to pay any additional costs not covered by these sources."

ADDITIONAL BACKGROUND:

The Port, King County, the City of Seattle (the City), and the Boeing Company are participating in the investigation of sediment contamination in the Lower Duwamish Waterway (LDW) Superfund Site under an administrative order issued by the U.S. Environmental Protection Agency (EPA). Assessment activities have identified a number of localized contaminated areas that EPA has determined should be addressed through cleanup actions taken prior to a final EPA determination of cleanup requirements for the LDW as a whole ("Early Action Areas"). One such location is the LDW sediments and adjoining bank area in the vicinity of the Port property at Terminal 117 referred to as the "T-117 EAA." The Port owns this sediment and bank area as the successor to Commercial Waterway District No. 1.

Contamination in the T-117 area is primarily from polychlorinated biphenyls (PCBs), which were used widely for decades, including for transformers and other electric equipment, before their manufacture and use was banned in the United States in 1978. An asphalt shingle plant operated on this property for many decades and, for a period of time in the 1970s, that facility used waste transformer oil as fuel, which was likely tainted with PCBs. Asphalt plant mishandling of waste transformer oil is the most likely source for the majority of the PCB contamination in the vicinity of T-117.

In 1999, the Port carried out a cleanup of the former Waterway District property located between the asphalt facility's property and the Waterway (referred to in earlier Commission actions as the Malarkey Asphalt site). In exchange for carrying out this cleanup action, payment of \$176,400 and a covenant not to sue, Malarkey Asphalt, the then-owner of the property, transferred ownership of its 1.92 acre parcel to the Port. The Malarkey Asphalt site and the former Waterway District property were joined to become the current T-117 property.

Following EPA's decision to list the LDW as a federal Superfund site and its subsequent designation of the T-117 sediment site as an "Early Action Area," in May 2003, the Port and the City entered into a Memorandum of Agreement to jointly fund the investigation and remediation of contamination within the sediments and in the adjoining bank area of this Early Action Area. In December 2005, the Port, the City and the EPA entered into an "Administrative Settlement Agreement and Order on Consent (2005 ASAOC) for Removal Action at the T-117 EAA. The Agreement requires the Port and the City to prepare the site's cleanup alternatives report, also known as the Engineering Evaluation/Cost analysis (EE/CA) for sediments, intertidal mudflats, bank, and a limited portion of the adjacent uplands in the vicinity of T-117.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 3 of 8

During the investigation of the bank area, additional areas of contamination above action levels were discovered on T-117 uplands that required immediate action. In addition, EPA decided to revisit its prior assumptions regarding reasonably anticipated future land uses. In June 2006, the Port Commission agreed to enter into a new ASAOC (the "2006 ASAOC") to authorize conducting this time-critical removal action, and to also direct Port staff to consider other cleanup options for the site that would enable alternative uses. The cleanup of the hotspots required under the 2006 ASAOC was performed that summer.

Subsequent investigations of the upland area (by the Port) and adjacent streets and residential yards (by the City) resulted in an expanded area of cleanup. (It now consists of three subareas: T-117 Sediments, T-117 Uplands, and Adjacent Streets and Yards). In addition, two recontamination assessment areas (the South Park Marina and Basin Oil) were added to the scope of work. These changes were formally established in a revised Statement of Work (SOW) which was approved by EPA in September 2007, and which replaces the SOW for the 2005 ASAOC.

The draft EE/CA is expected to go out for public comment during the third quarter of 2010. Afterwards, EPA will formally approve the proposed actions in an Action Memorandum, which is anticipated to be issued in the fourth quarter of 2010. We expect that EPA will approve Cleanup Alternative 2: Upland and Sediment Removal and Backfilling (no capping.) Alternative 2 provides a full soil and sediment cleanup approach that requires no significant long-term monitoring or administrative controls, and which will allow a full range of future site uses, including industrial/commercial operations, public access and habitat restoration.

Typical environmental reserve projects have four phases that align with the accounting of environmental liability recognition benchmarks. They are:

- (1) Remedial investigation and feasibility study (including EE/CA) ;
- (2) Design of the remedy (cleanup);
- (3) Remedy (cleanup) implementation; and,
- (4) Operations and maintenance.

The Commission previously provided authorization for the first phase of the work in the 2005 ASAOC. The remaining three phases will be authorized in the 2010 ASAOC, which we expect to bring to Commission in November 2010. However, due to the lengthy procurement process required, we are initiating consultant procurement at this time in order to have a consultant in place once the 2010 ASAOC is finalized.

PROJECT JUSTIFICATION:

The overall goal of the T-117 cleanup is to significantly reduce or eliminate the exposure of ecological and human receptors to sediment and soil contamination and thereby reduce or eliminate adverse effects on resources in the Early Action Area (EAA.) Subsequently,

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 4 of 8

the cleanup will allow a full range of future site uses, including industrial/commercial operations, public access and habitat restoration.

PROJECT STATEMENT AND OBJECTIVES:

Project Statement:

Comply with the SOW of the Pending 2010 ASAOC (eta November 2010) to perform planning, detailed pre-design analysis, design agency reporting and permitting and construction support, and operations and maintenance of the selected alternative as presented in the Final EE/CA and EPA's Action Memorandum. This procurement for design and support activities does not include consultant and contractor services for the actual construction of the remedy, or long-term monitoring.

Project Objectives:

The T-117 Project Objectives are:

- Perform the required remedial design, construction support, and operation, and one year of maintenance activities as required by the 2005 and 2010 ASAOC's, but not including the actual construction of the remedy or long-term monitoring.
- Perform the above work in accordance with EPA Statement of Work and Schedule (i.e., attachments to the 2005 and Pending 2010 ASAOC's).
- Manage and perform the work in accordance with local, state, and federal cleanup laws and regulations, with project controls and contract systems in place.
- Maximize cost recovery opportunities.
- Identify and consider community values and concerns, as part of a formal Public Participation Plan.

PROPOSED SCOPE OF WORK AND SCHEDULE:

Scope of Work:

The scope of the anticipated design contract includes the following:

- Environmental Review and Preliminary Design
- Design Development and Documentation
- Design Support, Data Gaps, and EE/CA Compliance Services
- Permitting Support
- Construction Support and Performance Monitoring
- Prepare a Compliance Monitoring Plan (CMP)
- First Year Operations and Monitoring
- Project Management, Controls, and Administration Support

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 5 of 8

Schedule:

This procurement process for project support is expected to be concluded by the end of November 2010.

The work pertaining to this authorization (T-117 EE/CA design and construction support) is intended to begin around December 2010 and continue until around the end of 2014 (after completion of one year of operations and maintenance). However, design work will not begin until the EE/CA is finalized, and the Port is actively negotiating the pending 2010 ASAOC. A separate request for Commission authorization to advertise and execute construction contract(s) for conducting the actual cleanup will be sought near the end of the design-phase when construction documents are completed and ready to advertise for bids.

The Port will secure long-term monitoring services under a separate procurement.

FINANCIAL IMPLICATIONS:

Budget/Authorization Summary:

This site was included in the Commission's 2010 environmental reserve spending authorization, approved on November 30, 2009. Any additional environmental reserve funds that may be required as the project moves forward will be reported annually to the Commission via routine environmental reserve reports and spending authorization requests.

Cost Estimate:

The costs for these professional services are estimated to be a total of \$2,300,000. This estimate is based on the current preferred alternative, but may change depending on EPA's selected alternative (presented in the Action Memorandum, expected by September 30, 2010) and the terms and schedule laid out in the Pending 2010 ASAOC.

Source of Funds:

All costs will be paid from environmental reserves and charged to non-operating expense in accordance with Port Policy AC-9. The Port's Tax Levy will pay the costs for the environmental reserves and associated environmental cleanup project that are not covered by grants or other cost recovery measures (see below).

In 2008, the Commission authorized a settlement agreement with the Malarkey Parties, the Duwamish Parties, the City of Seattle and King County regarding T-117, which resolved litigation related to past and future claims for T-117 cleanup costs between all parties. The proceeds from this settlement will be a primary source of funds for this

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 6 of 8

project. Furthermore, under the terms of the settlement agreement, the City will pay 40% of the costs incurred in the T-117 Sediments and Uplands. The City will pay 100% of the costs of the cleanup in the Streets and Yards.

In addition, Port staff is pursuing grant funding from the Washington State Department of Ecology for the design and construction work.

The approximate breakdown of the known source of funds for this phase of the T-117 Cleanup is:

- City of Seattle cost sharing 40%
- Department of Ecology grant 30%
- Other sources from settlement/Port costs 30%

ECONOMIC IMPACTS AND BUSINESS PLAN OBJECTIVES:

In addition to the numerous environmental and public health benefits, this cleanup action will enhance future use of T-117 by reducing the possibility that future cleanup actions will disrupt any tenant or future owner's activities.

STRATEGIC OBJECTIVES:

This project will achieve the strategic objective of accomplishing cleanup of the Port's property, while assuring that other responsible parties are paying their fair share.

ENVIRONMENTAL SUSTAINABILITY AND COMMUNITY BENEFITS:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA,) EPA reviews cleanup projects to ensure that they meet the substantive requirements of federal and state laws and regulations that are applicable or relevant and appropriate.

The project is located in the City of Seattle neighborhood of South Park, recognized as a socially diverse and economically disadvantaged neighborhood with significant environmental justice concerns. The T-117 site is located adjacent to single and multi-family residences. Current, internal Port planning efforts are evaluating alternatives to industrial or commercial uses, which includes some form of public access and aquatic habitat restoration. Further, cleanup planning and design efforts will consider and incorporate opportunities of materials reuse, recycling, and/or reduction. Finally, cleanup implementation will include significant environmental controls and performance monitoring to ensure public health and safety.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 7 of 8

TRIPLE BOTTOM LINE:

State and federal laws require elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater and sediment. From the perspective of the surrounding communities and the customers that we serve, the Port's participation in site remediation is the hallmark of responsible environmental stewardship.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

Alternative 1: Wait to procure these services until the 2010 EPA Action Memorandum is issued, or until the 2010 ASAOC is signed. The 2010 ASAOC will include project schedules that must be adhered to or the Port could face enforcement action. Delay arising from the Port's procurement process could result in missed deadlines and possibly enforcement action.

Alternative 2: Procure only pre-design, planning, and communication support until a cleanup alternative is selected and presented by EPA in the Pending 2010 ASAOC. This alternative would require the Port to perform a second procurement for the design and construction support work. This would result in a slack period where the Port is not performing any design work and the Port may incur additional costs to go through a second procurement process. In addition, it could result in a different consultant being awarded the second phase of work. Consistency within and between the phases of work is important in order to meet the exacting standards and deadlines in the Pending 2010 ASAOC.

Alternative 3: Procure all services for planning, pre-design, design, agency reporting, construction support, development of operation and maintenance plans and performance of first year of operation and maintenance. Starting the procurement process now will result in signing a contract with the consultant shortly before the pending 2010 ASAOC is signed. The Port can then move forward on a timely basis to meet the provisions of the pending 2010 ASAOC with the selected consultant. This is the recommended alternative.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- [2009 Public Participation Plan](#)
- [2010 Draft EE/CA Document](#)
- [2010 EE/CA Map Folio](#)

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

August 24, 1999 - Commission approved the purchase and sale agreement for the acquisition of the Malarkey Asphalt Property at a cost of \$176,400 and implementation of

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

May 14, 2010

Page 8 of 8

required environmental cleanup measures on adjoining Port property at a cost not to exceed \$800,000.

June 11, 2002 - Commission approved expenditure of \$1,500,000 previously reserved for aquatic sediment management and revision of 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.

August 24, 2004 - Commission approved execution of the Memorandum of Agreement (Cost Allocation) between the Port and the City of Seattle for Malarkey Early Action Area.

March 8, 2005 - Commission approved the project-wide authorization expenditure of \$8,102,200 for environmental cleanup action on Port properties during 2005.

October 11, 2005 - 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 on Consent for the T-117 Upland Investigation.

December 8, 2005 - Commission approved the project-wide authorization expenditure of \$8,705,760 for environmental cleanup action on Port properties during 2006.

June 27, 2006 - 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.

April 14, 2008 - Commission authorized the Chief Executive Officer to sign a Memorandum of Agreement with the National Oceanic and Atmospheric Administration, the Muckleshoot and Suquamish Tribes, the Washington Department of Ecology, and the U.S. Fish and Wildlife Service for Crediting Habitat Restoration Projects in and near the Lower Duwamish Waterway relating to Future Settlement of Natural Resource Damages Claims.

October 27, 2008 - Commission authorized the Chief Executive Officer to Sign a Settlement Agreement with the Malarkey Parties, the Duwamish Parties, the City of Seattle and King County regarding T-117 Site and Lower Duwamish Site Cleanup Costs, and Natural Resource Damage Liability.