

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**

Item No. 6b

Date of Meeting February 2, 2010

**DATE:** January 4, 2010

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Elizabeth Leavitt, Director, Aviation Environmental Programs  
Paul Agid, Environmental Program Supervisor, Aviation Environmental Programs  
Nora Huey, Director, Central Procurement Office

**SUBJECT:** Consulting services for environmental remediation of former airline fuel farms at Seattle Tacoma International Airport (Airport).

**AMOUNT OF THIS REQUEST:** \$127,380 previously authorized on March 31, 2009

**SOURCE OF FUNDS:** ADF

**ACTION REQUESTED:**

Commission determination that: 1) based on RCW 53.19.020(5), an exemption from competition should be granted as being appropriate or cost effective to allow the Chief Executive Officer (CEO) to enter into a contract with SLR Corporation for environmental consulting services for remediation of the United Airlines and Continental Airlines former fuel farms area at Seattle-Tacoma International Airport; and 2) Authorization for the Chief Executive Officer to execute a contract with SLR Corporation for environmental consulting services for remediation of the United Airlines and Continental Airlines former fuel farms area for an estimated cost of \$600,000 (of which the Port's allocated obligation is \$127,380 or 21.23%). The Port's share of the cost was previously authorized by the Commission on March 31, 2009.

**SYNOPSIS:**

On March 31, 2009, the Commission authorized execution of the *Fourth Addendum (Fourth Addendum) to Participation Agreement for Cleanup of Sea-Tac International Airport Jet Fuel Facility (Participation Agreement)*, an agreement between United Airlines, Continental Airlines, Olympic Pipeline Company, and the Port for remediation of the United Airlines and Continental Airlines Former Fuel Farms Area at Seattle-Tacoma International Airport. The total estimated cost of this phase of remediation is \$600,000, of which the Port's allocated share (21.23%) is \$127,380.

Consistent with prior versions of the *Participation Agreement*, the technical and cost elements of the *Fourth Addendum* were developed based on the cost estimates prepared by environmental consultants in response to a site-specific request for proposals. Continental Airlines, as the lead responsible party, issued the request for proposals for this phase of site environmental cleanup

## **COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

January 4, 2010

Page 2

activity on behalf of United Airlines, Olympic Pipeline and POS. Continental, with the participation and approval of the other parties, identified SLR Corporation as the consultant best able to achieve site remediation in the least amount of time and at the most reasonable cost.

Port Legal and Central Procurement Office have determined that state law requires the Port to competitively procure these services because the Port will fund a portion of the contract. State law requires a formal competitive process. Although the process managed by Continental was competitive, it did not strictly comply with state requirements.

Staff considers that it is not appropriate to cancel the process completed by Continental and start over, especially because the Port contributes only 21.23% of the total cost of these services. Staff requests that Commission to make a determination that a competitive solicitation process is not appropriate or cost effective in accordance with RCW 53.19.020 (5). The Port Commission has authority to exempt certain contracts from competitive procurement processes and has done so when the circumstances justify it. The multi-party arrangement of this clean-up, the low participation percentage of the Port's share, and the competitive nature of the procurement undertaken by the clean-up parties are reasons for the Commission to consider this request and determine that an exemption is appropriate or cost effective.

### **BACKGROUND:**

United Airlines and Continental Airlines operated underground jet fuel storage facilities on adjacent leaseholds at the airport beginning in the late 1950s (United) and 1970s (Continental). In 1988, Continental and United discovered jet fuel contamination in soil and ground water associated with each of their facilities. Subsequent investigations found that Olympic Pipeline and Port facilities may have contributed to the contamination, as well. Remediation of the contamination is required by state law. In 1995, the four parties entered into the *Participation Agreement* to investigate and remediate the site consistent with state law. The agreement allocated responsibility among the parties: Continental – 46.34%, United - 21.23%, Port – 21.23%, and Olympic Pipeline – 11.20%. The Commission authorized the Port's involvement in each phase of the work under the *Participation Agreement*. On March 31, 2009, the Commission authorized execution of the *Fourth Addendum*.

Consistent with the procedures used by the parties for earlier phases of the Participation Agreement, Continental invited four environmental consultants to submit technical and cost proposals for a defined scope of work. The four *Participation Agreement* parties, including the Port, reviewed and commented on the consultant submittals, and selected SLR Corporation's proposal based on duration, cost, and probability of success. The Port's execution, as one of the Fourth Addendum signatories of the SLR Corporation consulting contract, is the subject of this exemption request.

The proposed contract 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]." Based on our review of statutory obligations, open competition means allowing any interested firm an opportunity to compete for the work by issuing a solicitation and including an advertisement and/or posting the opportunity on the internet if the value of the contract is over \$200,000. These requirements are incorporated in Port of Seattle CPO-1, Procedures for Personal

## **COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

January 4, 2010

Page 3

and Professional Services. The *Fourth Addendum* consultant selection process did not strictly conform to these advertising requirements.

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 following reasons, cancelling the current process managed by Continental and mandating a new process is not appropriate or cost effective:

1. Continental Airline managed a competitive process, obtaining buy-in of the process from United Airlines, Olympic Pipeline, and the Port. Continental solicited proposals from four firms. Continental and the other signatory parties reviewed the proposals and selected the most qualified firm based on estimated project duration, cost, and probability of success.
2. A new procurement managed by POS would add significant costs to all parties and the consultant community with no reasonable expectation of a different result.
3. The subject consulting contract would be executed by the four parties to the Fourth Addendum (the Port and three private entities). POS contributes less than 22% of the cost of the contracted work.
4. The non-Port parties to the Fourth Addendum may not agree to undergo another procurement process, and could refuse further participation in the remediation. Were that to occur, the Port would have to outlay 100% of the cleanup costs and then pursue the other parties in litigation for cost recovery. This course of action would not only delay the cleanup, but would also impose increased financial burdens and risks on the Port.
5. While the selection process was led by a private entity rather than the Port, the process nonetheless complied with spirit of the law and Port procedures, if not the specific requirements.

This request asks the Commission to grant an exemption from competition for the United/Continental former Fuel Farms Area remediation consulting contract, and for authorization to execute, as one of the four *Fourth Addendum* signatories, the resulting consultant contract.

### **FINANCIAL IMPLICATIONS:**

This request for grant of an exemption from competition, and execution of a consultant contract, has no financial implications.

Port expenditures for the subject work (a \$127,380 share of the total \$600,000 estimated project cost) were previously approved by Commission on March 31, 2009.

### **COMMUNITY / CUSTOMER / ORGANIZATION IMPACTS:**

## **COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

January 4, 2010

Page 4

Elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil and groundwater is not only required by state and federal law, it is the hallmark of responsible environmental stewardship, from the perspectives of both the surrounding residential and business communities and the customers we serve.

Execution of this work anticipated by Fourth Addendum to the Participation Agreement will allow completion of cleanup of ground water contamination associated with operation of historical fuel storage facilities located at the airport.

### **PROJECT SCHEDULE:**

Remediation activity pursuant to the Fourth Addendum will begin shortly after execution of the consultant contract, and is anticipated to continue through 2011.

### **ALTERNATIVES CONSIDERED / RECOMMENDED ACTION:**

The following alternatives were considered for accomplishing the work described in the Scope of Work:

#### **Alternative 1**

Determine the exemption is appropriate or cost effective, grant the exemption and authorize the CEO to execute the consulting contract as currently negotiated and written. This alternative will result in completion of remediation of contaminated Port property, as required by state law, for an expenditure of less than one quarter of the total remediation cost. **This is the recommended alternative.**

#### **Alternative 2**

Do not grant the exemption. If the Commission chooses not to grant the exemption, the consulting contract would not be executed, and the primary responsible parties would be unlikely to complete the remediation. In that event, state regulatory agencies could mandate the work be accomplished, either by the Port under an enforcement or similar order, or by the agency, leaving the Port as the sole payer of remediation costs, subject to future legal action to recover costs from others, and the associated litigation costs and risks.

## **COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

January 4, 2010

Page 5

### **PREVIOUS COMMISSION ACTION**

Investigation and remediation of the United and Continental former fuel farms area via the Participation Agreement has been included within the overall Port Environmental Reserve program authorization since at least 1996, as follows:

On February 27, 1996, the Commission approved the expenditure of \$2,325,000 for eleven projects during 1996.

On July 10, 2001, the Commission approved the expenditure of \$5,100,000 for nine Aviation projects and six Seaport projects during 2001.

On March 11, 2003, the Commission approved the project-wide authorization expenditure of \$4,999,000 for environmental cleanup action on Port properties and for potential environmental liabilities during 2003.

On March 23, 2004, the Commission approved the project-wide authorization expenditure of \$8,081,000, for environmental cleanup action on Port properties during 2004.

On March 23, 2005, the Commission approved the project-wide authorization expenditure of \$8,102,222, for environmental cleanup action on Port properties during 2005.

On December 13, 2005, the Commission approved the project-wide authorization expenditure of \$8,705,760 for environmental cleanup action on Port properties during 2006.

On June 27, 2006, the Commission approved an increase in the 2006 project-wide authorization for environmental cleanup action on Port properties, to \$14,705,760.

On December 12, 2006 the Commission approved the project-wide authorization expenditure of \$7,756,549 for environmental cleanup action on Port properties during 2007.

On December 1, 2007 the Commission approved the project-wide authorization expenditure of \$11,833,000 for environmental cleanup action on Port properties during 2008.

On December 15, 2008 the Commission approved the authorization expenditure of \$10,396,000 for environmental cleanup action on Port properties during 2009.

On March 31, 2009, the Commission approved execution of the *Fourth Addendum to Participation Agreement for Cleanup of Sea-Tac International Airport Jet Fuel Facility*.

On November 30, 2009, the Commission approved the authorization expenditure of \$13,141,000 for environmental cleanup action on Port properties during 2010.