

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

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| Item No. | 6a |
| Date of Meeting | October 12, 2010 |

DATE: September 17, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Elizabeth Leavitt, Director, Aviation Planning and Environmental Programs
Paul Agid, Manager, Aviation Environmental Programs
Susan Ridgley, Port of Seattle Senior Legal Counsel

SUBJECT: *Agreement Regarding Groundwater Monitoring Costs at Seattle-Tacoma International Airport*, a multi-party agreement between the Port of Seattle, Delta Air Lines, Inc., and (collectively) the Rent-A-Car companies

AMOUNT OF THIS REQUEST: \$33,864, previously authorized on November 30, 2009

SOURCE OF FUNDS: Airport Development Fund

ACTION REQUESTED:

(1) Commission determination that a competitive solicitation process is not appropriate or cost effective for the contract with SLR International Corporation for environmental consulting associated with the *Agreement Regarding Groundwater Monitoring Costs at Seattle-Tacoma International Airport (Agreement)*, a multi-party agreement between the Port of Seattle, Delta Air Lines, Inc., and, collectively, the Rent-A-Car companies, and is therefore exempt from the competitive requirements of RCW 53.19.020(5); and (2) authorization for the Chief Executive Officer to execute (a) the *Agreement* between the Port of Seattle; Delta Air Lines, Inc. (successor by merger to Northwest Airlines Inc., hereafter “Delta”); and Avis Budget Car Rental LLC (“Avis”), Hertz Corporation (“Hertz”) and Vanguard Car Rental USA LLC (“Vanguard”), collectively known as the Rent-A-Car companies (“RACs”), for performance of groundwater monitoring associated with past operations of the parties at Seattle-Tacoma International Airport (“Airport”), consistent with the Model Toxics Control Act Agreed Order Groundwater Study for the Airport (Agreed Order Groundwater Study) and (b) a contract with SLR International Corporation, as one of five parties, for environmental consulting services for groundwater monitoring consistent with the *Agreement*, for an estimated cost of \$132,800 (of which the Port’s allocated share is \$33,864, or 25.5%).

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SYNOPSIS:

In 2008 the Airport completed a groundwater contamination study under a Model Toxics Control Act Agreed Order. The purpose of the study was to determine by computer modeling the potential environmental impact beyond the Airport property of groundwater contamination caused by historical Airport and Airport tenant operations. The study results concluded that contaminated groundwater was not likely to migrate beyond the Airport property, and that no significant impacts were likely.

At the completion of the modeling study, the Port agreed to perform groundwater monitoring to confirm the model predictions, in particular, with respect to specified locations of known or potential historical contaminant releases. The parties responsible for the specified releases are Delta, Avis, Hertz, Vanguard, and the Port (as a property owner/operator, and as successor to a bankrupt former tenant).

Port staff negotiated a cost-sharing agreement with Delta and the RACs to perform the requisite environmental monitoring. The parties agreed to allocate costs to Delta (37.6%), the RACs (36.9%), and the Port (25.5%). The total cost of the project as currently scoped is estimated to be \$132,800. The Port's allocated share is \$33,864.

Under the *Agreement*, the parties would, as a group, contract with a consultant to perform the monitoring. The *Agreement* incorporates the work plan and estimate prepared by SLR International Corp. Delta, responsible for the largest share of project costs, identified SLR International Corp. as the consultant best able to complete required monitoring at the most reasonable cost. Delta's selection was based on the airline's past experience with the consultant's work and cost effectiveness, and has been approved by the RAC participants. Port procurement procedures were not followed.

Commission approval of SLR International Corp is part of our request today. As Port procurement procedures were not followed, staff at the same time requests that Commission 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 circumstances justify. The multi-party arrangement for this clean-up, the low participation percentage of the Port's share, and Delta's acceptance of the responsibility for, and additional costs of, project management and contract administration are reasons for the Commission to favorably consider this request and determine that an exemption is appropriate or cost effective.

The requested Commission action would (1) exempt from competition the consultant selection process incorporated in the *Agreement*, consistent with RCW 53.19.020(5), and (2) authorize the Chief Executive Officer to execute (a) the *Agreement* and (b) the consulting contract, as one of five parties to the *Agreement*.

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The Port's 25.5% allocated share of the total value of the contract is \$33,864. Expenditure of this amount was previously approved by the Commission in its 2010 Port Environmental Reserve spending authorization on November 30, 2009.

BACKGROUND:

Agreed Order Groundwater Study:

In May 1999, the Port and the Washington Department of Ecology (DOE) executed a Model Toxics Control Act Agreed Order that required the Port to conduct a study of groundwater conditions in the uppermost regional aquifer in the vicinity of the Airport. In several locations below the Airport, groundwater in the uppermost regional aquifer had become contaminated as a result of historical Airport operations. The purpose of the Agreed Order Groundwater Study was to determine if groundwater impacted by known Airport sources of contamination, or undiscovered Airport sources of contamination, could move outside the Airport's boundaries and impact surface water bodies, wetlands, or drinking water supply wells in the nearby communities. All known and suspected Airport contaminated sites (27) were evaluated for their potential to impact groundwater in the uppermost regional aquifer. Ten known and potential contaminated sites identified as sources that had impacted, or could impact, that aquifer were used in the groundwater flow and contaminant migration modeling analyses. The analyses assumed worst-case contamination concentrations for each site.

The study has been completed. The results of the study indicate that, over a simulated 30-year period, contamination in the aquifer generated from Airport sites will not migrate beyond the Airport boundary, and will not impact local drinking water resources, creeks, wetlands or other potential receptors. DOE accepted the study findings and designated the Port's obligations under the Agreed Order complete. DOE requested that the Port, outside the requirements of the Agreed Order, conduct long term groundwater monitoring to confirm the results of the models used in the study. The Port agreed to implement the monitoring plan on a voluntary basis.

Cost-Sharing Agreement:

The *Agreement* is a cost-sharing contract between the Port and Airport tenants, Delta and the RACs, drawn to assure payment for the post-Agreed Order Groundwater Study monitoring program by the parties responsible for the contamination conditions being monitored. The *Agreement* incorporates a consultant proposal for conducting the monitoring program, with an estimated cost of \$132,800. By executing the *Agreement*, the Port accepts an allocated cost share of 25.5%, representing its dual position as property owner/operator and successor for a bankrupt former tenant, Pan American Airlines. The remaining allocations are to Delta (37.6%); Avis (18.4%); Hertz (9.2%); and Vanguard (9.2%). The total cost of the project as currently scoped is estimated to be \$132,800. The Port's allocated share is \$33,864. If the actual costs exceed this estimate, the parties would have to amend the *Agreement* and agree in writing to any contribution increase. Staff recommends Port execution of the *Agreement*.

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Consultant Selection:

SLR International Corp was selected by Delta to perform the required groundwater monitoring based on Delta's past experience with the consultant's performance of environmental management activities at airports in the Pacific Northwest, including Seattle-Tacoma International Airport. The selection was deemed acceptable by the RACs and Port staff based on a review of the consultant's proposal and cost estimate, which have been incorporated into the cost-sharing *Agreement*. The selection was approved by the RAC participants, and Port approval of SLR International Corp is part of our request today.

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]." Port Legal and Central Procurement Office have determined that state law requires the Port to competitively procure these services in accordance with RCW 53.19.020 because the Port will fund a portion of the contract. 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 and Professional Services. The *Agreement* consultant selection process did not conform to these 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 selection by Delta and mandating a new process is not appropriate or cost effective:

1. The subject consulting contract would be executed by the five parties to the *Agreement* (the Port and four private entities). Delta is responsible for 37.6% of the project costs, while the POS contributes 25.5%, Avis contributes 18.4%, and each of the remaining participants contributes less than 10% of the costs. Delta has also accepted the responsibility for project management and contract administration. Under the *Agreement*, therefore, Delta takes on the major share of financial responsibility, while the Port and other participants are minor contributors, with limited exposure. In that role, Delta's consultant selection was based on the airline's past experience with the consultant's successful performance and cost effectiveness.

2. All parties have reviewed the technical proposal and estimated costs; the proposal was found to be fully responsive to project requirements, and the cost estimate was found to be fair and reasonable.

3. A new procurement managed by POS would add significant delay to proceeding with the work.

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4. The non-Port parties to the *Agreement* may not agree to undergo additional procurement process, and could refuse participation in the monitoring program. Were that to occur, it is probable that the Port would have to outlay 100% of the monitoring costs and then determine whether to pursue the other parties in litigation for cost recovery. This course of action would not only delay the monitoring program, but would also impose increased financial burdens and risks on the Port.

FINANCIAL IMPLICATIONS:

Cost Estimate

The estimated total project expenditure is \$132,800. The Port's allocated share of the project cost is \$33,864, which will be paid to Delta according to the terms of the *Agreement*.

Source of Funds

A liability for the expenditures required under this *Agreement* was previously accrued as Environmental Reserves and charged to expense in prior years. The Agreed Order Groundwater Study monitoring program was included within the Commission's 2010 Environmental Reserve spending authorization, approved on November 30, 2009. The source of the funds is the Airport Development Fund.

COMMUNITY / CUSTOMER / ORGANIZATION IMPACTS:

Assessment of environmental contamination conditions, elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil and groundwater, and communication with the Public about such risks, are not only required by state and federal law, they are the hallmarks of responsible environmental stewardship.

Completion of the Agreed Order Groundwater Study post-modeling monitoring will complete the Port's assessment of the potential that groundwater contamination conditions at the Airport could impact the community that surrounds the Airport, satisfying the Port's commitment to the surrounding residential and business communities and the customers we serve.

BUSINESS PLAN OBJECTIVES:

Performance of groundwater monitoring will complete an agreement between the Port and DOE. The data generated will confirm the results of the Agreed Order Groundwater Study, demonstrating that groundwater contamination will not migrate beyond the airport boundary, and will not impact local drinking water resources, creeks, wetlands or other potential water bodies. The product of these efforts, as well as the attendant compliance with regulatory mandates, management of Port liabilities, and resulting support of the local community, aligns with the goals and objectives of the Aviation Division Business Plan.

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SCOPE OF WORK:

The scope of work to be performed under the *Agreement* includes well installation, well rehabilitation, and annual sample collection, laboratory analysis, and data evaluation for a period of five years. Should monitoring results fail to meet criteria established for the program, additional monitoring is required. The *Agreement* acknowledges the potential that additional monitoring could be necessary, but does not extend beyond the five year scope.

PROJECT SCHEDULE:

The monitoring program will commence on execution of the *Agreement*, and continue for five years. We anticipate that the fifth monitoring event and final program report will be completed in 2015.

ALTERNATIVES CONSIDERED / RECOMMENDED ACTION:

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

Alternative 1

Do not execute the *Agreement*. If the Port chooses to not execute the *Agreement*, the primary responsible parties would be unlikely to participate in the monitoring program. In that event, the Port would become the sole payer of monitoring costs, and might become involved in future legal action to recover costs from others, and the associated litigation costs and risks.

Alternative 2

Execute the *Agreement*, but require a substitute consultant selection process. If the Port chooses to amend the *Agreement* to require a substitute consultant selection process, it is possible that the parties would refuse to participate, due to added process and delay costs, as well as added commitment uncertainty. In that event the Port would, again, become the sole payer of monitoring costs, and might become involved in future legal action to recover costs from others, and the associated litigation costs and risks.

Alternative 3

Execute the *Agreement* as currently negotiated and written. This alternative will result in completion of the Port's monitoring obligation as agreed with the DOE, for an expenditure of about one quarter of the total program cost. **This is the recommended alternative.**

PREVIOUS COMMISSION ACTION:

The Agreed Order Groundwater Study has been included within the overall Port Environmental Reserve program authorization since 1997, as follows:

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On February 25, 1997, the Commission authorized execution of a Model Toxics Control Act Agreed Order to perform the STIA Groundwater Study; execution of a professional services agreement to perform the Agreed Order Groundwater Study; and the expenditure of \$1,100,000 for to implement the work.

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