

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

ACTION ITEM

Item No. 5f

Date of Meeting September 11, 2012

DATE: September 4, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Kathy Bahnick, Manager, Seaport Environmental and Planning
Doug Hotchkiss, Sr. Environmental Program Manager

SUBJECT: Professional Services Contract Amendment for the Lower Duwamish Waterway (LDW)

Amount of Request: \$2,000,000

Source of Funds: Environmental
Remediation Liability Non Ops

Est. State and Local Taxes: N/A

Est. Jobs Generated: 10 Full-Time Employees

ACTION REQUESTED:

Request authorization for the Chief Executive Officer to execute an amendment to add \$2,000,000 to the AECOM professional service contract to support the investigative work required for the Lower Duwamish Superfund Site (P-00314929) for a total contract value of \$15,500,000. In addition, this memo provides notification to the Port of Seattle Commission in accordance with RCW 53.19.060 that the amendment for AECOM exceeds 50% of the original contract value. (The contract will expire on December 31, 2014.)

SYNOPSIS:

This contract supports the investigative work required for the LDW Superfund Site under the Administrative Order on Consent (Order) that the Port and the other potentially responsible parties (PRPs) have signed with the U.S. Environmental Protection Agency (EPA) and Washington State Department of Ecology (Ecology). Costs for this contract is shared among the PRPs which formed the Lower Duwamish Water Group (LDWG) which is made up of the Port, the City of Seattle, King County, and Boeing. The Port is responsible for managing the joint consulting contracts.

The procurement for the AECOM contract was originally authorized in 2004. The services included in the procurement were for completing the Feasibility Study (FS) and support during negotiation of the Cleanup Order (Record of Decision (ROD)). The original contract amount was \$800,000 to cover the first year of contract work. To manage the contractor and because the budget that this work was performed under was approved annually, historically (before CPO-1) we had amended the contract on an annual basis to cover the next years required work. In 2009 to be

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consistent with CPO-1, the contract was amended to increase the contract amount by \$7,019,000 to an amended total of \$13,500,000 to reflect the anticipated full cost and time needed to complete the entire scope of work for the FS which is the basis for the Record of Decision. The Port anticipated that the work would be completed by 2012 and set the contract expiration date to be December 31, 2012. However, based on the delay of the release of EPA's Proposed Plan (which outlines the cleanup approach based upon alternatives in the FS) to January 2013, the new schedule anticipates the ROD be completed in 2014.

The current authorized contract amount has almost been expended based on a higher level of effort required to complete the FS document. To complete the FS and the additional studies EPA and Ecology have identified that they will request under the Order, additional funds will be needed and the contract will need to be extended. Accordingly, the Port is requesting authorization to add \$2,000,000 to the contract, for a total of \$15,500,000. The amendment to the contract exceeds 50% of the cumulative value of the initial contract and this memorandum constitutes Commission notice in accordance with RCW 53.19.060.

There is no funding request as part of this authorization. Funding is included in the annual Environmental Remedial Liability (ERL) authorization.

BACKGROUND:

Under an existing Memorandum of Agreement (MOA), the Port functions as the contracting agent for a group of PRPs (i.e. governments and private parties that signed on to the Order under a cost sharing agreement approved by Commission). Three-quarters of the contract costs are reimbursed by the other PRPs on a routine basis. The other PRPs include the City of Seattle, King County, and Boeing, as represented by LDWG.

The Order contains a general outline of a scope of work (SOW). The scope of work for this contract is tied to the SOW in the Order. Specific defined tasks were identified during each stage of work plan development, which occurred after the consultant was hired to perform the general scope. The work performed under this contract is managed through individual service directives that are tied to the budget as approved and managed under the ERL authorization budget for the site.

At the time of the last contract amendment in 2009, it was expected that the FS would be final, the proposed plan would have come out for public comment and the ROD would be completed by 2012. The current schedule is for the Proposed Plan to go out for public comment in January 2013 and the ROD to come out in early to middle 2014. The work required by the Order is still ongoing and is anticipated to continue until December 2014. The bulk of the work is almost complete (draft final FS is scheduled to go out for a 60 day public comment period in October), and the consultant in place is deeply familiar with all of the studies and reports, since they have produced them.

PROJECT JUSTIFICATION:

This project will complete the requirements specified for this site in the Order.

The purpose of the project is to fulfill the legal obligations under the Order to complete the RI/FS and associated studies. These documents are then used by EPA to select cleanup actions, as documented in the Proposed Plan (January 2013) and ROD (2014).

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PROJECT SCOPE OF WORK:

The scope of work (SOW) for this project is completion of activities identified in the Order SOW, including the RI, the FS, Proposed Plan/ROD Support, and associated studies as directed by EPA.

Additional activities requiring \$2,000,000 of additional funding under the AECOM contract include:

- Proposed Plan/ ROD Support: \$500,000
- Additional Studies: \$1,500,000

Project Schedule: We anticipate all work associated with the Order SOW be completed by December 2014. Design and construction of cleanup is not included in the current Order or these contracts.

FINANCIAL IMPLICATIONS:

Budget/Authorization Summary

Source of Funds

There is no funding request as part of this authorization. Funding for the associated costs is included in the annual Environmental Remedial Liability (ERL) authorization. The costs are also partially reimbursed by our partners and are eligible for state grant recovery when it is available.

ECONOMIC IMPACTS AND BUSINESS PLAN OBJECTIVES:

As a signatory on the Order, the Port is legally obligated to do this work as directed by EPA and Ecology. The Port continues to carefully control costs associated with the effort to minimize overall economic impact.

STRATEGIC OBJECTIVES:

This work supports the Century Agenda goal of being the greenest, most energy efficient Port in North America by moving toward cleanup of the Lower Duwamish Waterway. Meeting our obligation for this cleanup is a critical component of the Green Gateway strategy of meeting our legal obligations.

ENVIRONMENTAL SUSTAINABILITY AND 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 reflects our commitment to environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve. These detailed studies are the critical first step for EPA and Ecology to create a cleanup plan for the LDW.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

1. Undertake a full procurement process to enter into a new contract to replace the existing contract. Given that this phase of the project, as well as the originally solicited scope of work is almost complete, the consultant in place is deeply familiar with all of the studies and the associated reports since they have produced them. Replacing the contractors at a time when studies and analysis are nearly complete would impair getting the work done in a timely, accurate fashion, and almost certainly result in a failure to meet regulatory deadlines and

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resultant EPA enforcement action. This could also impact our cost-sharing partners, exposing them to enforcement action and additional cost to procure and bring new consultants up to speed on the projects. Under the existing MOA, our partners would 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.

2. Conduct the activities using Port resources, without outside consultant assistance. The Port does not have sufficient staff resources and expertise to conduct these environmental management tasks without consultant and laboratory support. Under the existing MOA, partner's staff costs are not eligible for reimbursement, nor is there a mechanism in place to obtain reimbursement for Port resources used. This is not the recommended alternative.
3. Amend the existing contract by adding \$2,000,000 to the total contract value. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Lower Duwamish Waterway Group Memorandum of Agreement
- Administrative Order on Consent for Remedial Investigation/Feasibility Study U.S. EPA Docket No. CERCLA-10-2001-0055, Ecology Docket No. 00TCPNR-1895

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- Since 1993, the Commission has, through a series of Commission actions and annual project-wide authorizations, authorized expenditures under ERL funding sources to perform the actions described above.
- On March 23, 2004, the Commission approved the project-wide authorization to authorize work, including: prepare contract documents; perform contract administration and execution; execute outside professional services agreements and amendments; perform environmental investigations, studies, and cleanups; prepare drawings, specifications, schedules, and cost estimates, advertise and award major and small works contracts; perform construction services; pre-purchase materials and equipment including contract award and execution for environmental cleanup action on Port properties and for potential environmental liabilities for an amount not-to-exceed \$8,081,000 reserved for environmental cleanup.
- On August 11, 2009, the Commission approved increasing the maximum authorized amounts for four contracts that supported three Superfund site investigations (Lower Duwamish Waterway, T117 and East Waterway), including the AECOM contract for the LDW FS investigation.