

PORT OF GRAYS HARBOR
SPECIAL MEETING COMMISSION MEETING MINUTES
May 18, 2020

The Port of Grays Harbor Special Commission Meeting for May 18, 2020 was called to order at 9:00 a.m. This meeting was a virtual meeting conducted using Zoom. The public was able to access this virtual meeting using either the Zoom platform or by calling in.

Those in attendance at the meeting were as follows:

COMMISSION AND STAFF

Phil Papac	Commissioner
Stan Pinnick	Commissioner
Tom Quigg	Commissioner
Gary Nelson	Executive Director
Arthur Blauvelt	Legal Counsel
Mike Folkers	Director of Finance & Administration
Leonard Barnes	Deputy Executive Director
Mike Johnson	Contract and Project Manager
Randy Lewis	Director of Environmental and Engineering Services
Kayla Dunlap	Public Affairs Manager
Alissa Shay	Manager of Business Development
Molly Bold	Westport Business Manager
Seth Taylor	Marine Terminals Manager
Ross Read	Director of Operations
Chris Hunt	IT Manager
Lisa Benn	Accounting Manager
Amy Carlson	Communications & Administrative Coordinator

VISITORS

Arnie Martin	GHAS
Rich Martinez	Kitsap Bank

Items discussed and action taken where required are as follows:

REPORTS:**Port of Grays Harbor Marina Dredging Contract 2004**

Randy Lewis, Director of Environmental and Engineering Services, reported Pacific Pile and Marine's (PPM) ceased operations in December. At that time, they had removed a little over 5% of the material called for in the base bid. Port personnel believe that PPM's slow progress is due to inexperienced personnel and PPM means and methods including equipment choices.

PPM claims that a layer of clay or native soil materials are materially different from the conditions indicated in the Dredge Material Characterization Report referred to in Specification Section 1.5 JOB CONDITIONS, paragraph 1.5 B. PPM claims pre-bid analyses by its consultants Ellicot Dredge Technologies (EDT) and Doctor Dredge, LLC corroborates the assumptions and conclusions PPM drew from the Dredge Material Characterization Report. PPM claims that its equipment selections were based on its reasonable reading of the Contract Documents corroborated by EDT and Dr Dredge. Port personnel do not agree that PPM encountered changed conditions or that PPM's means and methods and equipment selections were appropriate for the conditions.

Contract No. 2004 places the duty on PPM to accept existing conditions "as is" and to visit the site and investigate and perform any testing the Contractor deems appropriate. The stated purpose of the Dredge Material Characterization Report was to determine chemical suitability of the material for in-water disposal, not soil conditions for purposes of choosing appropriate means and methods and equipment for performing the work. Although a grain size analysis is listed on one table, the remaining 15 tables relate to the chemical and environmental characteristics of the dredge material in order to determine what material can be disposed of in-water as opposed to land disposal. It is believed that PPM's investigation was inadequate, that it was not reasonable for them to rely on the Dredge Material Characterization Report and that PPM's chosen means and methods were inappropriate for the work. Port staff disagree that the conditions encountered differ materially from those ordinarily encountered or generally recognized to be inherent in the work provided for in the Contract.

PPM's claimed additional costs of \$593,253.00 for work already performed is thought to be overstated because they are due to its own inefficiencies, such as an inexperienced crew and dredging equipment selection. PPM staff indicated they

had never operated the specific dredge they brought on any previous jobs. Several reasons for selecting this dredge were mentioned during the initial meetings between PPM and Port staff including the ability to haul it in by truck instead of having to transport by barge, maneuverability around the floats and docks, and the ability to dredge under floats and most boats without moving them because of the arrangement of the dredge head. PPM's Project Manager assured marina staff that they would not be required to clear entire floats of moored vessels as was required by the larger dredging equipment the other contractor was using, however this was not the case.

PPM advised that they picked their equipment for its maneuverability in close proximity to floats and the bank line. However, the equipment they chose lacked adequate propulsion or features such as spuds to push the machine forward and provide stability. PPM's superintendent commented the machine could not push forward in even the relatively fine material at high tide and in deeper water. Dredges of similar size are used in smaller marinas such as Ilwaco and Willapa, however they are equipped with spuds and cutter heads versus the rotary head PPM chose to use on Contract No. 2004.

To date, the Port has paid just under \$947,000 including a \$200,000 change order that resulted from PPM's placing the pipeline in an unpermitted location. This represents approximately 48% of their base bid. This has resulted in a little over 5% of the contract material being removed from the marina. In addition to its claim for \$593,253, PPM has provided the Port with an estimate of \$3.1 million to finish Contract No. 2004 that they originally bid at \$1,962,916. While PPM has not provided the Port with a cost breakdown, based on the experience of its personnel, and means and methods to date Port staff does not have confidence in its forward priced ROM estimate reflects the reasonable cost of the work. To date, PPM has not met any of the schedules or deadlines they have committed to. PPM committed to provide a plan by early January 2020 with their strategy, equipment, and specifics to solve their production and schedule problems. The Port has not received such a plan.

Based on all of the circumstances, including the significant cost increase and uncertainty of the contractor's ability to complete the project in the remaining time, it is believed the public interest would best be served by terminating Contract No. 2004 for convenience under Article 33.

RESOLUTION ITEMS:**Resolution No. 3004**

Arthur Blauvelt, Legal Counsel, requested adoption of Resolution No. 3004 terminating Contract No. 2004 with Pacific Pile and Marine for the Port's convenience.

At the June 11, 2019 Port Commission meeting, the Commission authorized the award of Contract No. 2004 to PPM, the low bidder. The contract called for dredging approximately 110,000 cubic yards out of the Westport Marina. On June 15, 2019, a Notice to Proceed was issued by the Port to PPM. PPM began dredging on October 21, 2019 and stopped dredging in early December 2019. PPM had dredged approximately 6,400 CY of the 110,000 CY under Contract No. 2004 when it demobilized. Under the contract PPM has until end of January 2021 to complete its dredging.

The Port is concerned that PPM is unable to complete the contract under the terms it was bid or in a timely manner. PPM has made a claim for extra compensation for dredge work it has already performed in excess of \$593,000 and has provided the Port with an estimate of \$3.1 million to finish Contract No. 2004 that they originally bid at \$1,962,916. PPM alleges that it is entitled to additional compensation under the "Changed Conditions" section of the contract. The Port disputes this claim.

Under Article 33 of Contract No. 2004, the Port has the authority to terminate the contract for its convenience in the public's best interest. The concept of Termination for Convenience dates back to the American Civil War. To avoid costly military procurements when changes in wartime technology or cessation of conflict rendered them unnecessary, the federal government included termination for convenience clauses in its contracts. Today, termination for convenience clauses are required by many regulations for most government contracts and is a well-recognized contractual covenant under Washington law.

Under Contract No. 2004 Article 34 Payment for Termination for Port's Convenience, the Port is required to compensate PPM for the actual work performed at the unit contract price up to the termination. Except for a small retainage, the Port has paid PPM for all of the material it dredged up to PPM's demobilization in December 2019. Under Article 37, the Port is not required to pay PPM any anticipated profits on the work that it will not be performing because of the termination. Upon termination for convenience of Contract No. 2004, Port staff will be able to advertise for bids for the balance of the work.

RECOMMENDED ACTION

Motion to adopt Resolution No. 3004 thereby determining it is in the public's best interest to terminate Contract #2004 with Pacific Pile and Marine, LP for the Port's Convenience and authorizing termination of Contract #2004 for the Port's Convenience.

Motion to adopt Resolution No. 3004: *Determining it is in the public's best interest to terminate Contract #2004 with Pacific Pile and Marine, LP for the Port's Convenience and authorizing termination of Contract #2004 for the Port's Convenience* was made by Commissioner Quigg and seconded by Commissioner Papac. Motion passed with a vote of 3-0. Resolution adopted.



There being no further business to come before the Commission, the Special Meeting adjourned at 9:55 a.m.

ATTEST:

President

Secretary