

File No. 110071

Committee Item No. 7
Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee
2011

Date: February 2, 2011

Board of Supervisors Meeting

Date 2/8/11

Cmte Board

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*Attachment A: Request for Qualifications, Environmental Review Ser.

*Attachment B: Agreement with Environmental Science Associate

Completed by: Victor Young

Date: January 28, 2011

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Administrative Code - Waiver of the Competitive Bidding and Solicitation Requirements for a
 2 Contract with Environmental Science Associates for the California Environmental Quality Act
 Review of the 34th America's Cup Event]

3 Ordinance approving a waiver of the competitive bidding and solicitation requirements
 4 of Chapter 6 and Chapter 21 of the Administrative Code for a contract with
 5 Environmental Science Associates for California Environmental Quality Act review of
 6 the 34th America's Cup Event and coordinating and developing submittals for
 7 associated federal and state permits.
 8

9 NOTE: Additions are single-underline italics Times New Roman;
 10 deletions are ~~strike-through italics Times New Roman~~.
 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strikethrough normal~~.

11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. Findings.

13 (a) On December 14, 2010, subject to review required by the California Environmental
 14 Quality Act (CEQA), the Board of Supervisors adopted Resolution No. 585-10 approving a
 15 34th America's Cup Host City and Venue Agreement among the City, the America's Cup Event
 16 Authority and the San Francisco America's Cup Organizing Committee to host the 34th
 17 America's Cup in San Francisco.

18 (b) The 34th America's Cup Host City and Venue Agreement requires the City to use
 19 its best efforts to complete the environmental review of the event required under CEQA, and if
 20 such environmental review leads to a determination to proceed with the event, to complete all
 21 actions necessary to obtain authorizations for the events under CEQA and other applicable
 22 laws by no later than 12 months after the America's Cup Event Authority has provided the City
 23 sufficient information to prepare the project description required by CEQA.
 24
 25

1 (c) The 34th America's Cup Host City and Venue Agreement also requires the City to
2 secure all state and federal permits, including those required for construction-related activities
3 required to prepare the Venue sites for the event. Agencies with permitting authority over
4 such activities and agencies that are consulted during such permit reviews include, but are not
5 limited to, the U.S. Army Corps of Engineers, the National Oceanic and Atmospheric
6 Administration, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife, the San
7 Francisco Bay Regional Water Quality Control Board, the San Francisco Bay Conservation
8 and Development Commission, the California State Lands Commission, the California
9 Department of Fish and Game and the Bay Area Air Quality Management District. These
10 agencies often review and comment on CEQA documents and analyses; CEQA and state and
11 federal permitting are closely related and typically rely on the same underlying studies.

12 (d) On December 31, 2010, the Golden Gate Yacht Club announced the selection of
13 San Francisco as the venue for the 34th America's Cup.

14 (e) The City wishes to expeditiously retain a consultant team to commence the
15 performance of environmental review and to assist with state and federal permitting for the
16 event to meet the time frame of the 34th America's Cup Host City and Venue Agreement.

17 (f) The San Francisco Port and the Department of Public Works had previously
18 selected Environmental Science Associates (ESA) for environmental review of the San
19 Francisco Pier 27 Cruise Ship Terminal, Northeast Wharf Plaza and future developments at
20 Piers 19 and 23, based on the issuance of a Request for Qualifications (RFQ) issued in April
21 2010.

22 (g) The Pier 27 cruise ship terminal project is affected by the 34th America's Cup Event
23 because the development phasing and sequence of improvements of the cruise terminal
24 facility would be modified to accommodate America's Cup race-viewing and team hospitality
25

1 facility and berths by January 1, 2013 for the America's Cup Event, then subsequently further
2 improved to complete the cruise terminal project and Northeast Wharf Plaza.

3 (h) The cruise ship terminal project and the America's Cup Event are interrelated and
4 will require many of the same or similar background studies and analyses; therefore, it would
5 be more efficient to retain ESA to perform both services to meet the accelerated CEQA
6 schedule required in the 34th America's Cup Host City and Venue Agreement and minimize
7 costs.

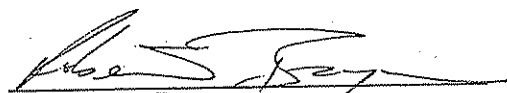
8 (i) Based on evaluation of ESA's response to the April 2010 request for qualifications,
9 the Port believes that ESA is a responsible contractor qualified to perform the environmental
10 review and to coordinate and develop submittals to meet state and federal permitting
11 requirements for the 34th America's Cup Event, given especially ESA's extensive experience
12 evaluating marine construction and development projects.

13 (j) The Port, therefore, recommends that to best enable the City to meet the 12-month
14 timeline of the 34th America's Cup Host City and Venue Agreement and address the
15 interrelated effects of the Pier 27 Cruise Ship Terminal/Northeast Wharf project by January
16 2013, the City waives its competitive bidding and solicitation requirements and authorizes the
17 Port to enter into an agreement with ESA to perform the environmental review and to
18 coordinate and develop submittals to meet state and federal permitting requirements for the
19 34th America's Cup.

20 Section 2. Notwithstanding the competitive bidding and solicitation requirements of
21 Chapter 6 and Chapter 21 of the Administrative Code, the Board of Supervisors hereby
22 authorizes the Port of San Francisco to award a contract to Environmental Science
23 Associates to conduct CEQA environmental review of the 34th America's Cup event and to
24 coordinate and develop submittals for state and federal permits for the event.
25

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By:



4 Robert A. Bryan
5 Deputy City Attorney
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LEGISLATIVE DIGEST

[Administrative Code - Waiver of the Competitive Bidding and Solicitation Requirements for a Contract with Environmental Science Associates for the California Environmental Quality Act Review of the 34th America's Cup Event]

Ordinance approving a waiver of the competitive bidding and solicitation requirements of Chapter 6 and Chapter 21 of the Administrative Code for a contract with Environmental Science Associates for California Environmental Quality Act review of the 34th America's Cup event and coordinating and developing submittals for associated federal and state permits.

Existing Law

Chapters 6 and 21 of the San Francisco Administrative Code require competitive bidding or solicitation for City contracts.

Effect of Ordinance

This ordinance authorizes the Port of San Francisco to award a contract to Environmental Science Associates to perform California Environmental Quality Act (CEQA) review of the 34th America's Cup Event and coordinate and develop submittals for federal and state permits for the project, notwithstanding the competitive bidding and solicitation requirements of Chapters 6 and 21.

Background Information

On December 14, 2010, subject to review required by CEQA, the Board of Supervisors adopted Resolution No. 585-10 approving a 34th America's Cup Host City and Venue Agreement among the City, the America's Cup Event Authority and the San Francisco America's Cup Organizing Committee to host the 34th America's Cup in San Francisco. The 34th America's Cup Host City and Venue Agreement requires the City to use its best efforts to complete the environmental review of the event required under CEQA, and if such environmental review leads to a determination to proceed with the event, to complete all actions necessary to obtain authorizations for the events under CEQA and other applicable laws by no later than 12 months after the America's Cup Event Authority has provided the City sufficient information to prepare the project description required by CEQA. This ordinance would enable the Port of San Francisco to expeditiously retain ESA to commence the performance of environmental review and to assist with state and federal permitting for the event to meet the time frame of the 34th America's Cup Host City and Venue Agreement.



Memorandum

To: Supervisor Carmen Chu, Budget and Finance Committee Chair
Supervisor Ross Mirkarimi, Vice-Chair
Supervisor Jane Kim

From: Brad Benson, Port
Elaine Forbes, Port
Edgar Lopez, DPW
Mike Martin, OEWD

cc: Jennifer Matz, Monique Moyer, Ed Reiskin

Date: January 28, 2011

Re: Ordinance Waiving Competitive-Bidding Requirements for a Contract for California Environmental Quality Act ("CEQA") Review of the 34th America's Cup and Coordinating and Developing Submittals for State and Federal Permits

34th America's Cup Host and Venue Agreement

On December 31, 2010, Mayor Gavin Newsom executed the 34th America's Cup Host and Venue Agreement ("HVA") among the City and County of San Francisco, the America's Cup Event Authority, LLC ("ACEA"), and the San Francisco America's Cup Organizing Committee ("SFACOC").

Section 2.1(a) of the HVA states:

(a) If selected as host city, the City as lead agency under CEQA will use its best efforts to complete the environmental review of the Event required under CEQA and, if such environmental review leads to a determination to proceed with the Event, to complete all actions necessary to obtain authorizations for the Event (including for the Infrastructure Work, as defined below) under both CEQA and applicable federal, state and local statutes, codes, ordinances and regulations, by no later than twelve months after the Authority has provided the City with sufficient information to prepare the "project" description required for CEQA review.

If a Final Environmental Impact Report is certified for the 34th America's Cup pursuant to CEQA, the HVA contemplates delivery of the Port premises described in Section 5 and Exhibit B of the HVA commencing January 1, 2012, with certain premises delivered in 2012 and 2013. Delivery

of these premises to the ACEA on this timeline is required to facilitate early Event-related preparations, including proposed Infrastructure Works contemplated in Section 6 of the HVA. These Infrastructure Works include City development of the Pier 27 Cruise Terminal (to the level of "cold shell"¹ improvement) and the Brannan Street Wharf south of the Bay Bridge, and ACEA expenditure of \$55 million in waterfront improvements to Port property, at locations to be determined.

CEQA Timeline

This schedule allows 11 months to complete the required CEQA analysis and related public participation processes – an extraordinary timeline for an event of this significance. Typically, preparation of a complex environmental impact report requires 18 to 24 months.

Concurrent with CEQA analysis, City staff has identified a number of state and federal agencies that must issue permits or provide guidance related to waterfront construction and other Event-related activities, including the U.S. Army Corps of Engineers (in consultation with the National Oceanic and Atmospheric Administration and U.S. Fish and Wildlife), the National Park Service (including the Golden Gate National Recreation Area), the San Francisco Bay Regional Water Quality Control Board, the California Department of Fish and Game, the San Francisco Bay Conservation and Development Commission, the California State Lands Commission and the Bay Area Air Quality Management District.

In order to meet this timeline, City staff intends to publish a Project Description for the 34th America's Cup on February 4, 2011. Subsequently, City staff will issue a Notice of Preparation ("NOP") stating that an Environmental Impact Report ("EIR") will be prepared for the 34th America's Cup. Public scoping meetings are planned for later in February, 2011. When the City publishes the NOP, it will include the City's schedule for major CEQA milestones, including the public scoping meetings, publication of a draft EIR, the public comment period, responses to comments, and certification of the final EIR.

CEQA Consulting Services

This schedule does not permit the normal City process for a competitive selection of a consultant to prepare the environmental impact report for Planning staff review and coordinating and submitting applications for required state and federal permits, and the studies that inform these efforts. The typical timeline for competitive bidding of a professional services contract of this type is six months:

- Civil Service Commission approval and meet and confer with labor unions who represent City employees. (5 Weeks)
- Obtaining input from City departments and allowing review of multiple drafts (Human Rights Commission, Risk Manager and City Attorney) to complete the Request for Qualifications (RFQ). (7 Weeks)

¹ Cold shell means construction of the building and basic building systems, including utilities, but without the final finishes. In this case, cold shell will exclude some of the features that will ultimately allow the Cruise Terminal to function as a terminal, including installation of security features, baggage handling, etc. The HVA permits the City to build to the level of cold shell, but does not require this as a City Infrastructure Work. If the City delivers the cold shell of the Pier 27 Cruise Terminal (due by January 1, 2013), the ACEA may fit out the building with temporary tenant improvements for use as a Team Hospitality center. These improvements will have to be removed within 6 months after the Match.

- Advertising the RFQ: typically a month long process but under AC34 time restraints, the minimum amount would be weeks to allow firms to conduct 'good faith efforts' in compliance with HRC subcontracting goals. (4 Weeks)
- Evaluation: panel members review all the proposals and the highest ranked firms are notified and scheduled for interviews 2 weeks later. (4 Weeks)
- Scoring: Once the highest ranked firm is identified, HRC conducts their evaluation of documents. (2 Weeks)
- Commission review. (2 weeks)
- Contract Signing: Consultant must obtain insurance certificates, business licenses and other documents. (4 weeks)

DPW Selection Process for Pier 27 Cruise Terminal EIR

Fortunately, the Department of Public Works, in concert with the Port, recently completed a competitive selection for a CEQA consultant for the Port's Pier 27 Cruise Terminal Project, a critical component of the City's proposed infrastructure plan for the 34th America's Cup.

As shown in Attachment A, Section 2, on April 10, 2010, the Department of Public Works (DPW) issued a request for qualification (RFQ) for an environmental firm to complete an EIR for the Cruise Terminal Project. During the process, the San Francisco Human Rights Commission established a goal of 15% participation in subcontracting by qualified Local Business Enterprises ("LBEs").

Following a review process, Environmental Sciences Associates (ESA) was determined to be the most qualified respondent. ESA's bid included a 33% participation by qualified LBEs (see Attachment B, Appendix A, page 48).

DPW entered contract negotiations with ESA in Fall of 2010. Negotiations were put on hold pending the outcome of the City's bid for the 34th America's Cup. On January 18, 2011, DPW executed the contract with ESA for the Cruise Terminal Project EIR for an amount not to exceed \$851,453.

Proposed Ordinance and Contract Modification

The proposed Ordinance waives the competitive selection provisions of the Administrative Code for CEQA and state and federal permitting coordination and submittals for the 34th America Cup, and permits the City to enter into a contract with ESA for these services ("Ordinance"), recognizing that ESA was recently procured via a traditional competitive process for a project that lies within the footprint of the 34th America's Cup project area.

If adopted by the Board of Supervisors and signed by the Mayor, the Ordinance will permit City staff, subject to further negotiation with ESA regarding rates and scope, to modify the existing ESA contract to amend the scope of work to provide for joint analysis (including cumulative impact analysis) of the Pier 27 Cruise Terminal Project and the 34th America's Cup, along with coordination and submittals of applications for state and federal permits. City staff will require that the contract amendment substantially exceed the HRC LBE goal of 15% that HRC established for the Cruise Terminal Project environmental contract.

Given the City's experience in managing consultant contracts to provide environmental services, City staff have benchmark data that will be used to make sure that the City is paying a fair price for the additional services that will be performed by ESA. In the event that there is

disagreement in fees, the City is prepared to issue "time and materials" tasks in order to move the project forward while maintaining fiscal oversight over expenditures.

City staff will utilize the same hourly rates for services performed shown in Appendix B of Attachment A as a ceiling to negotiate the revised scope including the addition of the analysis of 34th America's Cup Event-related activities and state and federal permitting. Hourly rates for state and federal permitting-related services will be further informed by the Port's as-needed pool rates for environmental consultants.

The modified contract will be subject to Port Commission approval. If approved, the contract will fall well below Charter Section 9.118 threshold of \$10 million for Board of Supervisors approval. City staff will work with ESA to maintain LBE participation significantly above the threshold goal established by the Human Rights Commission.

Total Projected 34th America's Cup CEQA and Permitting Costs

In his November 18 2010 report on the 34th America's Cup to the Board of Supervisors, the Budget Analyst estimated City costs for environment review at \$3,115,000. City staff is on track to fall within that expenditure estimate including staffing, consultant support and funding for dedicated staff at state and federal permitting agencies.

These CEQA and permitting costs are eligible for reimbursement by private fundraising conducted by the SFACOC, which has pledged to raise \$12 million to offset expected City costs by January 1, 2012 and \$32 million by 2013 pursuant to the HVA (Section 9.4). Subject to further consultation with permitting agencies and negotiation of consulting services, the 34th America's Cup CEQA and permitting costs are currently estimated at:

Table 1: Projected AC34 CEQA and Permitting Costs

| | |
|---------------------------------------------------------------------------------------------------------------------------|--------------------|
| MEA Planner III - CEQA & BCDC | \$125,000 |
| CEQA Consultant Support – AC34 Additional Scope (High End of Range) | 600,000 |
| CEQA Fees | 417,000 |
| Senior Environmental Project Manager | 176,000 |
| Environmental Planner IV | 148,856 |
| Port Regulatory Permit Review | 25,000 |
| State and Federal Permitting Consultant Support (High End of Range) | 400,000 |
| State and Federal Permit Fees | 187,000 |
| (1) MOUs with Regulatory Agencies (Dedicated Staffing) – U.S. Army Corps of Engineers (NOAA, USFW), RWQCB, CA Fish & Game | 600,000 |
| Total AC34 CEQA and Permitting Costs | \$2,678,856 |

Note: (1) To facilitate its permitting for the Water System Improvement Program, the San Francisco Public Utilities Commission developed a series of Memoranda of Agreement with state and federal permitting agencies to fund dedicated, full-time staff to attend to permitting of its projects across the City's water system. City staff is pursuing the same approach for the 34th America's Cup, consistent with the requirements of the HVA (Section 1.2) that the City enter into MOUs with Governmental Authorities to secure "on terms and conditions acceptable to the Authority and the relevant Governmental Authority, all [required] rights, services, approvals and legislative or regulatory entitlements or exemptions."

The total AC34 CEQA and permitting costs are currently estimated to be less than the cost estimates reported to the Budget and Finance Committee by City staff in December 2010. These costs are subject to change.

Benefits of the Ordinance

Combining the Cruise Terminal and the 34th America's Cup into one environmental document under one prime consultant, without a competitive bidding and solicitation requirement, will result in a time and cost savings.

The time savings is estimated at 6 months, as described above. While difficult to quantify, there is an estimated total savings of hundreds of thousands of dollars due to incorporating the required CEQA analysis in one document. For several topics, the analysis for the Pier 27 Cruise Terminal and the 34th America's Cup will be the same or similar, which further strengthens the case for consolidation as a single contract/project. Having two consultants work on overlapping projects may result in unnecessary conflict of scope of work and additional coordination efforts by all parties involved in the process. We estimate additional savings arising from reductions in administrative fees for managing sub-consultants, preparing billings, submitting HRC documentation, quality assurance/quality control, and management meetings between the City and the prime consultant.

If the City rebid the CEQA work and related state and federal permitting support for the America's Cup (which does not seem possible under the current schedule), there are no guarantees that a future bid may result in lower costs. We strongly believe that the use of a single prime consultant (ESA) would save the City money compared to the competitive bidding approach.

City staff recommends approval of the proposed Ordinance. Thank you for your consideration.

Attachment A:
REQUEST FOR QUALIFICATIONS
ENVIRONMENTAL REVIEW SERVICES
SAN FRANCISCO PIER 27 NEW CRUISE SHIP TERMINAL AND PIERS 19 and 23



BUREAU OF PROJECT MANAGEMENT
DEPARTMENT OF PUBLIC WORKS
CITY & COUNTY OF SAN FRANCISCO

REQUEST FOR QUALIFICATIONS

FOR

ENVIRONMENTAL REVIEW SERVICES
IN ACCORDANCE WITH (CEQA)
AT

SAN FRANCISCO PIER 27 NEW CRUISE SHIP TERMINAL AND PIER 19 and 23
APRIL 2010

The Department of Public Works encourages responses from certified local business enterprises (LBE), and encourages Qualifications involving information of associations including certified LBEs as prime or joint venture consultants.

This contracting opportunity includes a 15% San Francisco Human Rights Commission (HRC) Local Business Enterprise (LBE) subconsulting goal. Note: If a proposer demonstrates in its proposal that it exceeds the established LBE subconsulting participation goal by 35% (i.e. 20.25% for this project) or more, such proposer is not required to conduct good faith outreach efforts or to submit evidence of good faith efforts. For the purposes of the LBE subconsulting requirements, "LBE" refers to small and micro-LBEs only.

Attendance at the Pre-Qualifications Conference is highly encouraged and is one of the Good Faith Outreach Efforts steps. Refer to Form 2B, HRC Attachment 2 for more requirements.

This RFQ is available at no charge.

A complete copy of this
document located in File No 11007

**REQUEST FOR QUALIFICATIONS
ENVIRONMENTAL REVIEW SERVICES
SAN FRANCISCO PIER 27 NEW CRUISE SHIP TERMINAL AND PIERS 19 and 23**

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Attachment B:

**City and County of San Francisco
Department of Public Works, on behalf of the Port of San Francisco
875 Stevenson Street, Room 420
San Francisco, California 94103**

Agreement between the City and County of San Francisco

and

**Environmental Science Associates (ESA)
225 Bush Street, Suite 1700
San Francisco, CA 94104-4207**

This Agreement is made this 8th day of September, 2010, in the City and County of San Francisco, State of California, by and between: Environmental Science Associates (ESA), hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through the Executive Director of the Port of San Francisco.

Recitals

WHEREAS, the Department of Public Works, on behalf of the Port of San Francisco ("Department") wishes to provide Environmental Review Services in accordance with the California Environmental Quality Act at San Francisco Pier 27 New Cruise Ship Terminal and Piers 19 and 23; and the Port Commission authorized the award of a contract and issued resolution number 10-61 dated effective August 19, 2010; and,

WHEREAS, a Request for Qualifications ("RFQ") was issued on 04/26/2010, and City selected Contractor as the highest qualified scorer pursuant to the RFQ; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4090-09/10 on 02/01/2010;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

*A complete copy of this document located in File No. 110071
September 8, 2010