

## AGENDA REPORT

**Resolution:** Approve an Increase of \$35,000 for a Maximum Not-To-Exceed Contract Authority of \$592,965 with Oliver de Silva, Inc. dba Gallagher & Burk, Inc. for the Howard Terminal Pavement Repair Project. **(Engineering)**

**MEETING DATE:** 9/13/2018

**AMOUNT:** \$592,965 (Total Not to Exceed Contract Authority)  
Operating Expense

**PARTIES INVOLVED:** Oliver de Silva, Inc. dba Gallagher & Burk, Inc.  
Oakland, CA.  
David DeSilva

**SUBMITTED BY:** Chris Chan, Director of Engineering

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

Staff is requesting approval of an increase of \$35,000 for a maximum not-to-exceed contract authority of \$592,965 with Oliver de Silva, Inc. dba Gallagher & Burk, Inc. for the Howard Terminal Pavement Repair Project. A contingency amount was not included in the original not-to-exceed contract authority requested from the Board. The additional contract authority allows payment to the contractor for change order work and would allow the contract to be closed out.

### **BACKGROUND**

The Port is obligated to maintain the environmental cap at Berths 67-68, also known as, the Charles P. Howard Terminal ("Howard Terminal"). The environmental restrictions at this terminal are described in the Department of Toxic Substances Control's ("DTSC") "Remedial action certification dated December 23, 2004 in compliance with the Operation and Maintenance ("O&M") agreement, dated 12 August 2004, which was entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and the DTSC, recorded on 3 March 2003, and subsequently amended and recorded on 8 September 2004." Staff identified areas within the environmental cap that required repair to maintain compliance with the O&M agreement and proceeded to solicit bids in March 2018.

On April 12, 2018 by Resolution 18-28, the Board authorized the Executive Director to enter into a contract with Oliver de Silva, Inc. dba Gallagher & Burk, Inc. ("Contractor") in

the amount of \$557,965 for the Howard Terminal Pavement Repair Project ("Project"). A contingency amount was not included in the not-to-exceed contract authority. The work was completed by June 30, 2018.

## **ANALYSIS**

The Howard Terminal Pavement Repair Project ("Project") was an "in-kind" replacement of the existing asphalt pavement located at Howard Terminal. The requested action is needed to cover the cost of a single change order for bid quantity variances that occurred during the construction of the project. Due to variations in actual field conditions during construction, the final bid quantities varied from the initial bid amounts. These types of incidental variances occur with most projects and are typically addressed by including a 5% to 10% contingency allowance. However, Staff inadvertently did not include a contingency allowance when requesting Board authorization on April 12, 2018.

As a result, at this time, Staff seeks Board authorization to increase the contract authority with the Contractor by \$35,000 for the bid item variance change orders.

## **BUDGET & STAFFING**

There is no budget impact as this amount was included in the FY 2017/2018 Operating Expense Budget.

The proposed action does not have any staffing impact.

## **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

This contract is for Major Maintenance and is not part of the Port's Capital Improvement Program (CIP) and therefore the provisions of the MAPLA do not apply to this work.

## **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan 2018-2022. <https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Improve Customer Service
- Goal: Modernize and Maintain Infrastructure
- Goal: Care for Our Environment

## **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the contract is a construction contract

covered by state prevailing wage rules and the prevailing rate of wage is higher than the wage required by the Living Wage Regulations.

## **SUSTAINABILITY**

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities.

## **ENVIRONMENTAL**

CEQA Determination: This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. Port staff conducted an environmental analysis on the road maintenance work described above and determined that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; therefore, the activity is not subject to CEQA.

## **GENERAL PLAN**

This project involves maintenance of existing facilities being used in conformance with the Oakland General Plan, pursuant to Section 727 of the City of Oakland Charter, and will not change the use of any facility(ies).

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

This project is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

## **OPTIONS**

Staff has identified the following options for the Board's consideration:

1. Approve the actions as outlined in this agenda report. This is the recommended action.
2. Do not approve the additional contract authority as outlined and requested in this agenda report. This action will prevent the contract from being closed out and may expose the Port to a construction claim.

## **RECOMMENDATION**

Staff recommends that the Board adopts a resolution to:

Approve an increase of \$35,000 for a maximum not-to-exceed contract authority of \$592,965 with Oliver de Silva, Inc. dba Gallagher & Burk, Inc. for the Howard Terminal Pavement Repair Project.