

MEMORANDUM

July 20, 2009

TO: Potential Redwood Marine Terminal RFQ Respondents

FROM: David Hull, Chief Executive Officer

SUBJECT: Supplemental information related to the Request for Qualifications (RFQ) for Redwood Marine Terminal (RMT) NEPA and CEQA Compliance Including Preliminary Conceptual Design - Project No. 2009-RMT-1

Over the course of the first couple of weeks of circulation of the Redwood Marine Terminal NEPA/CEQA RFQ, the Humboldt Bay Harbor, Recreation and Conservation District has been asked to clarify several points in the RFQ. This Memo is intended to provide additional information to those "frequently asked questions". If you have any additional questions related to the RFQ or your submittal, please do not hesitate to contact me at (707) 443-0804 or at dhull@portofhumboldt.org. Submittal deadline is 4:00 PM Friday, July 31, 2009.

Frequently Asked Questions:

1. Please explain a little more about the "Health Impact Analysis."

Response: The following are typical "standards" for conducting a Health Impact Analysis (HIA) and are presented here as information; prospective RFQ respondents should note that this is NOT intended to be a template.

Although HIA is in use in a number of settings internationally, the practice is just emerging as a field in many parts of the world including the United States. While available guidance documents for HIA describe the typical procedural steps and products of each stage of the HIA process, considerable diversity exists in the practices and products of HIA due to the variety of decisions assessed, the local practice settings, and the nascent evolution of the field.

Both for practice quality and for HIA development and institutionalization, HIAs should aim to adhere to some minimum standards of good practice. At present, there is a lack of specific standards or benchmarks to clearly distinguish HIA as a practice or to promote or establish HIA quality.

A number of HIA practitioners working in the North American context have developed the following discussion to translate the values underlying HIA and key lessons from conducting HIA into specific "standards for practice" for each of the five typical stages of the HIA process. The development of these standards was one of several objectives agreed upon by participants at the first *North American Conference on Health Impact Assessment* held in Oakland, California in September 2008.

The members of the North American HIA Practice Standards Working Group do not claim to have achieved all of these standards to date. It is recognized that real-world constraints and varying levels of capacity and experience will result in an appropriate and ongoing degree of diversity of HIA practice. Overall, these standards will be viewed as relevant, instructive, and motivating for advancing HIA quality rather than rigorous criteria for acceptable or adequate HIA.

Assessment should include at minimum: 1) a profile of baseline conditions (e.g., baseline health status and factors known or suspected to influence health); 2) an evaluation of potential health impacts (e.g., qualitative and/or quantitative analyses) including a qualitative or quantitative judgment of their certainty and significance and evaluation of any inequitable impacts; and 3) management strategies for any identified adverse health impacts, in the form of decision alternatives, mitigation of specific impacts, or other related policy recommendations:

- Documentation of baseline conditions should include documentation of both population health vulnerabilities (based on the population characteristics described above) and inequalities in health outcomes among subpopulations or places.
- HIA findings and conclusions should rely on the best available evidence. This means:
 - Evidence considered may include existing data, empirical research, professional expertise and local knowledge, and the products of original investigations.
 - When available, practitioners should utilize evidence from well-designed and peer-reviewed systematic reviews.
 - When available, HIA practitioners should consider published evidence, both supporting and refuting particular health impacts.
 - The expertise and experience of affected members of the public (local knowledge), whether obtained via the use of participatory methods, collected via formal qualitative research methods, or reflected in public testimony, is potential evidence.
 - Justification for the selection or exclusion of particular methodologies and data sources should be made explicit (e.g., resource constraints).
 - The HIA should identify data gaps that prevent an adequate or complete assessment of potential impacts.
- An HIA should acknowledge limitations of data and methods.
 - Assessors should describe the uncertainty in predictions.

- Assumptions or inferences made in the context of predictions should be made explicit.
- Affected members of the public should have the opportunity to comment on the validity of evidence and findings.
- The HIA should acknowledge when available methods were not utilized and why (e.g., resource constraints).
- The lack of formal, scientific, quantitative or published evidence should not preclude reasoned predictions of health impacts.
- The assessment of significance of impacts or the establishment of thresholds of significance, when applicable, should reflect evidence as well as community values, and should occur through a transparent, inclusive, and documented public process.
- The HIA should include specific recommendations to address the health impacts identified, including decision alternatives, modifications to the proposed policy, program, or project, or mitigation measures.
- HIA practitioners should seek expert guidance regarding potential decision or design alternatives and mitigations to ensure they reflect current available and effective practices.
- Recommendations should account for uncertainty in HIA predictions through providing suggestions for monitoring, reassessment, and potential future measures to mitigate any identified effects (e.g., adaptive management).

2 Page 2 of the RFQ’s Exhibit A NOP Project Description includes elements of the Phase 1 Project related to marketing, lease negotiations and permitting as part of the goals for the site. Does the Consultant need to include any environmental documentation component for these goals as part of the RFQ submittal?

Response: No. The NEPA/CEQA compliance work related to the RFQ is intended to address only elements that result in changes in the physical environment, including land use components of the project, as detailed in the RFQ and in the TranSystems Final Feasibility Study and Business Plan on the District’s website www.humboldtby.org. The District does not contemplate that activities such as marketing, lease negotiations, and permitting will be associated with significant changes in the physical environment.

3 The Humboldt Bay Harbor District is the CEQA lead agency; who is the NEPA lead agency?

Response: The second page of the RFQ under “Background” includes the following text: “*The environmental document prepared for the project will thus be a joint EIR/EIS document, with the District being the CEQA lead agency and the currently undesignated*”

federal funding agency being the NEPA lead.” When funding for the project is acquired, the federal lead will be identified.

4 How many public meetings and meetings with the District staff are estimated?

Response: The District estimates that in order to comply with CEQA/NEPA process considerations, approximately five (5) public meetings will be necessary (including a Scoping Meeting) in Eureka, California. In addition, the District estimates two (2) project team meetings with District staff and approximately one (1) meeting per month by conference call.

5 Does the District desire any visual simulations of the proposed project as a part of the deliverables?

Response: Yes. The District would like to have a minimum of two (2) visual simulations from ground level looking at the project site. Specifically, one from the City of Eureka’s Wharfinger Building (1 Marina Way, Eureka); and one from the town of Samoa.

6 Does the District anticipate any hazardous material sampling on the property?

Response: Yes. The District expects that anywhere the Consultant anticipates significant excavations, either on land or in the bay, the consultant will sample for: TPH-d; TPH-mo; PAHs; PCBs; CAM-17 metals; dioxins/furans; total volatile solids; butyltins; moisture content; total organic carbon; and grain size distribution. Field duplicates, equipment blanks and other QA/QC samples will be taken in accordance with an approved QA/QC plan. The aim of this sampling is to determine whether contamination exists that may affect the project, as well as to identify appropriate mitigation measures for any contamination identified on the site; consultants should scope their work appropriately for this aim.

7 How many copies of documents are required?

Response: The District will require six (6) hard copies of all reports (including drafts), one (1) electronic version in Microsoft Word (2007) format, and one (1) electronic version in pdf format compatible with Acrobat 7 (PDF version 1.6).

8 Are there any previous or related environmental documents available for the site or in the vicinity of the site?

Response: Yes. In 1994 the District certified an EIR for a somewhat similar project on the proposed project site; this document is posted on the District's website (www.humboldt-bay.org) under "Redwood Marine Terminal." In addition, there is a 2006 "Town of Samoa Master Plan Draft EIR," a County of Humboldt EIR for the proposed Samoa Town Master Plan, on the same internet site.

9 Because of TranSystems' and PB Ports and Marine's previous work on or near the Redwood Marine Terminal, are they precluded from responding to this RFQ?

Response: No. The District has concluded that the skill-sets used by both of these firms previously are different from the skill-sets requested under this solicitation. The District's prior contractors are neither precluded from participating in additional project teams nor favored for additional work on this project.

10 Does the sealed set of estimated fees for professional services count toward the 40 page RFQ submittal limit?

Response: No

11 What does the District's standard agreement look like?

Response: See next page

DRAFT

AGREEMENT FOR

REDWOOD MARINE TERMINAL

NATIONAL ENVIRONMENTAL POLICY ACT AND

CALIFORNIA ENVIRONMENTAL QUALITY ACT

COMPLIANCE

INCLUDING

PRELIMINARY CONCEPTUAL DESIGN

PROJECT NO. 2009-RMT-1

This Agreement, made and entered into this _____ day of _____, 2009, by and between the Humboldt Bay Harbor, Recreation and Conservation District, a special district organized and existing in the County of Humboldt under and by the virtue of the laws of the State of California, hereinafter referred to as “**DISTRICT**” and _____(name)_____ a firm providing professional consulting services with offices at _____(address)_____, hereinafter referred to as “**CONSULTANT**”.

WITNESSETH

THAT WHEREAS, the **DISTRICT** requires the production of National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance including preliminary conceptual design for the Redwood Marine Terminal Modernization Project as detailed in the November 2008 Final Redwood Marine Terminal Business Plan which will be used to identify, and propose measures to avoid, minimize or mitigate environmental impacts associated with the modernization; and

WHEREAS, CONSULTANT is qualified and experienced to provide such services.

NOW THEREFORE, DISTRICT and **CONSULTANT**, mutually agree as follows:

1. CONSULTANT services shall be furnished in accordance with the “Terms and Conditions for Professional Consulting Services Agreements” attached as Exhibit A and made a part of this agreement by reference.

2. CONSULTANT shall perform that work described in the “Redwood Marine Terminal National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance including preliminary conceptual design Scope of Work”, attached as Exhibit B (TO BE ATTACHED IN THE FINAL VERSION) and made a part of this agreement by reference, and as described in more detail in the District’s Request for Qualifications for Redwood Marine Terminal National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance including preliminary conceptual design, Project Number 2009-RMT-1, including all Exhibits thereto, which is incorporated by reference as if set forth in full herein, and the **CONSULTANT’S** Statement of Qualifications dated _____, 2009, which is incorporated by reference as it set forth in full herein.

3. In consideration for **CONSULTANT’S** performance of the above described services, **DISTRICT** shall pay **CONSULTANT** as compensation in full for such services, an amount not to exceed without prior written agreement by **DISTRICT** by amendment to this Agreement, _____ dollars (\$_____) payable pursuant to monthly invoices as set forth in Paragraph 8 of Exhibit A of this Agreement, utilizing the schedules set forth in Exhibit C to this Agreement. However, should District believe, in its sole discretion, that the amounts billed leave an inadequate balance of the “not to exceed” amount to complete the remaining work required under this contract, **DISTRICT** may withhold such amount as it deems necessary and negotiate with **CONSULTANT** the amount of the invoice to be paid. In performing these services, **CONSULTANT** and its employees and agents will be acting as an independent contractor, and shall not be deemed to be agents or employees of the **DISTRICT**.

WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**HUMBOLDT BAY HARBOR,
RECREATION AND
CONSERVATION DISTRICT:**

CONSULTANT:

BY _____

DENNIS HUNTER

President, Board of Commissioners President, Consultant

ATTEST:

1099 INFORMATION

BY _____ Taxpayer ID # _____

MIKE WILSON

Secretary, Board of Commissioners

EXHIBIT A

HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

TERMS AND CONDITIONS **FOR PROFESSIONAL CONSULTING SERVICES AGREEMENTS**

1. **DEFINITIONS** - “Consultant” shall mean the Professional Consultant which has entered into the Agreement which by reference is subject to the terms and conditions hereinafter set forth. “District” shall mean the Humboldt Bay Harbor, Recreation and Conservation District, a public entity. “Agreement” shall mean the purchase order, contract or other written instrument constituting the Agreement between the Consultant and the District.
2. **AMENDMENT OF SCOPE OF WORK** - District shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement.
3. **DISTRICT’S RIGHT TO TERMINATE/SUSPEND AGREEMENT** - At any time and for any reason, District shall have the right to terminate or cancel the Agreement, take possession of the Consultant’s studies, preliminary drawings, computations and specifications, insofar as they are complete and acceptable to the District, and pay the Consultant such equitable proportion of the total remuneration (the fee based upon the percent of work complete) for the work actually done by the Consultant at the time of such discontinuance bears to the whole of the work required to be done by the Consultant under the terms of the Agreement.

District, at its sole discretion, may suspend indefinitely or abandon the completion of the project, or any part thereof, and may require the Consultant to suspend the performance of its services. Said right to suspend or abandon shall be without limit or restriction. If the Agreement is suspended for one year or longer and then restarted, District will renegotiate compensation with the Consultant.

If the District thereafter should determine to complete any work related to this project, the District shall have the right to require completion of the studies, designs, drawings, specifications, and other documents upon compensation of the Consultant in accordance with this Agreement.

4. **EMPLOYMENT PRACTICES** - Consultant shall not discriminate in his/her performance under the Agreement either directly or indirectly on the grounds of race, color, religion, sex, age, or national origin in his/her employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. The Consultant will comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21).

5. **TITLE TO DOCUMENTS** - Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in the District, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the District. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to the District without restriction or limitation on their use. In the event of reuse by the District on another project or alteration to any documents prepared by Consultants, it shall be at District's own risk.
6. **RECORDS OF PERFORMANCE** - Consultant shall maintain adequate records of performance of the Agreement and make these records available for inspection, audit, and copying by the District throughout the duration of the Agreement and for a period of three (3) years from the date of final payment.
7. **ASSIGNMENT** - The Agreement shall not be assigned by the Consultant in whole or in part, without the written consent of the District.
8. **PAYMENT** — Consultant shall invoice the District monthly for services rendered, on or about the first day of the month for services performed during the previous month, and shall deliver such invoice to District monthly. Consultant shall submit itemized invoices for work performed for all individuals working on the project and for all expenses. . District shall make payments on District approved invoices within thirty (30) days after District's approval of such invoice.
9. **FEDERAL AND STATE RULES AND REGULATIONS** - In the event this Request for Qualifications to Provide Professional Consulting Services cites any Federal or State financial assistance involved in the project for which professional services are provided, the Consultant shall have the duty of performing its work under this Agreement in accordance with applicable Federal, State, and local laws, rules and regulations.
10. **CORRECTION OF WORK** - The performance of services or acceptance of information furnished by Consultant shall not relieve the Consultant from obligation to correct any nonconforming deliverables which are a result of defective work subsequently discovered and all incomplete, inaccurate or defective work shall be remedied by the Consultant on demand without cost to the District.
11. **CONSULTANT'S LIABILITY** - The Consultant shall be responsible for all injuries to persons and for all damage to property of the District or others caused by or resulting from the negligence of the Consultant, his/her employees, agents or subcontractors during the progress of or connected with rendition of services here rendered, and shall defend and hold harmless and indemnify the District and all officers and employees of the District from all cost and payments for damages or injuries arising out of the negligent performance of the work of the Consultant or his/her subcontractors under the Agreement.
12. **GENERAL LIABILITY INSURANCE** - The Consultant shall take out and maintain, throughout the duration of the Agreement, comprehensive general liability insurance in accordance with Attachment 1 to Exhibit A.

13. **AUTOMOBILE INSURANCE** - The Consultant shall provide automobile insurance covering all bodily injury and property liability incurred throughout the duration of the Agreement in accordance with Attachment 1 to Exhibit A.
14. **WORKERS' COMPENSATION INSURANCE** - The Consultant shall, throughout the duration of the Agreement, maintain in full force and effect a policy of workers' compensation insurance covering all its employees and volunteers as required by the State of California, in accordance with Attachment 1 to Exhibit A.

Prior to the execution of the Agreement, the Consultant shall provide the District a Certificate of Workers' Compensation Insurance. The Consultant shall provide the District with a Workers' Compensation Insurance Endorsement that includes the following:

1. A waiver of subrogation clause which states the following:
"This insurance company agrees to waive all rights of subrogation against the District, its officers, officials, employees, and volunteers for losses paid under the terms of this policy, which arise from the work performed by the named insured for the District."
 2. A statement that the policy shall not be canceled except after thirty (30) days prior written notice to the District.
 3. The endorsement must have an endorsement number, policy number, and an original, authorized signature.
15. **PROFESSIONAL LIABILITY INSURANCE** - The Consultant shall, at his/her own expense, take out and keep in force throughout the duration of the Agreement, professional liability insurance in accordance with Attachment 1 to Exhibit A. Consultant shall furnish District with the Certificate of Insurance ordering the required Coverage prior to commencing performance.
 16. **SUBCONTRACTING** - None of the services covered by the Agreement shall be subcontracted without the prior written consent of the District. Consultant shall include all subcontractors working for the Consultant and having received consent by the District, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor having received consent by the District. All coverages for subcontractors shall be subject to all of the requirements stated herein for the Consultant.
 17. **COVENANT AGAINST CONTINGENT FEES** - The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure the Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration; contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the District shall have the right to annul the Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
 18. **DELAYS AND EXTENSIONS** - The consultant will be granted time extensions for delays beyond the Consultant's control. Time extensions will be equal to the length of

the delay or as otherwise agreed upon between the Consultant and the District and shall be approved in writing by the District Engineer. In such event, compensation as set forth in the Scope of Work shall be subject to renegotiation upon written demand of either party to the Agreement.

19. **CONSULTANT'S ENDORSEMENT** - The Consultant will endorse plans, specifications, reports and documents in accordance with applicable portions of the Business and Professions Code of the State of California.
20. **CONTRACT TERMS TO BE EXCLUSIVE** — This document is the entire Agreement between the parties and it incorporates or supercedes all previous Agreements describing the terms and provisions of the Agreement for consulting Services.
21. **CONTRACT LOCATION** – This contract is entered into and is within the legal jurisdiction of Humboldt County, California.
22. **CONTRACT TERM** – This contract remains in force until terminated by District.

1 ATTACHMENT 1 TO EXHIBIT A

HUMBOLDT BAY HARBOR RECREATION AND CONSERVATION DISTRICT

STANDARD INSURANCE REQUIREMENTS FOR PROFESSIONAL CONSULTING AGREEMENTS

- A. Unless modified in the agreement, Consultant shall maintain the insurance required in this insurance standard.
- B. Commercial General Liability Insurance shall be maintained by Consultant in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury, and property damage. Coverage shall be at least as broad as Insurance Services Office form number CG-0001.
- C. Comprehensive Automobile Liability Insurance, which provides for total limits of not less than \$1,000,000 combined single limits per accident applicable to all owned, non-owned and hired vehicles. Coverage shall be at least as broad as Insurance Services Office form number CA-0001 (latest edition).
- D. General Liability and Automobile Liability Policies are to contain, or be endorsed to contain, the following provisions:
 - 1. District, its elected officials, officers, employees, agents, and volunteers are to be covered as additional insured as respects liability arising out of work or operations performed by or on behalf of Consultant; premises owned, leased, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to District, its elected officials, officers, employees, agents, and volunteers.
 - 2. The insurance coverage of Consultant shall be primary insurance as respects District, its elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by District, its elected officials, officers, employees, agents, and volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
 - 3. Coverage shall state that the insurance of Consultant shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice has been given to District.
 5. Statutory Workers' Compensation shall be provided in the amount required by the Labor Code of the State of California and Employers' Liability Insurance. Both the Workers' Compensation and Employers' Liability Insurance policies shall contain the insurer's waiver of subrogation in favor of District, its elected officials, officers, employees, agents, and volunteers.
 6. Professional Liability Insurance (Errors and Omissions) shall be provided in an amount not less than \$1,000,000 against loss due to error or omission or malpractice of Consultant. Coverage is to be endorsed to include contractual liability.
- E. Any deductibles or self-insured retentions must be declared to and approved by District.
- F. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII.
- G. Consultant shall designate the Humboldt Bay Harbor, Recreation and Conservation District as an additional insured and Certificate Holder of the insurance. Consultant shall furnish District with certificates of insurance and original endorsements effecting the coverages required by this clause. Certificates and endorsements shall be furnished to: Humboldt Bay Harbor, Recreation and Conservation District, P.O. Box 1030, Eureka, CA 95502-1030. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District prior to the commencement of contracted services. District may withhold payments to Consultant if adequate certificates of insurance and endorsements required have not been provided.
- H. The requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by District, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to an agreement with the District, including, without limitation, provisions concerning indemnification.
- I. If any policy of insurance required by this Section is a "claims made" policy, pursuant to Code of Civil Procedure §342 and Government Code §945.6, Consultant shall keep said insurance in effect for a period of eighteen (18) months after the termination of any agreement.
- J. If any damage, including death, personal injury or property damage, occurs in connection with the Consultant's performance in accordance with an agreement

with the District, Consultant shall immediately notify District by telephone at 707-443-0801. No later than three (3) calendar days after the event, Consultant shall submit a written report to District's Chief Executive Officer, containing the following information, as applicable: (1) name and address of injured or deceased person(s); (2) name and address of witnesses; (3) name and address of any known insurance company other than Consultant's; and (4) a detailed description of the events, damage, and whether any District property or personnel was involved.