

MUNICIPALITY OF ANCHORAGE



Office of the Mayor

Mayor Dan Sullivan

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December 4, 2013

Honorable Charlie Huggins
Senate President
Alaska State Legislature
State Capitol Room 111
Juneau, AK 99801

Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol Room 208
Juneau, AK 99801

To Senate President Huggins and House Speaker Chenault:

Included with this letter is the quarterly report for the first quarter of SFY 2014 from the Municipality of Anchorage regarding the Port of Anchorage Intermodal Expansion Project (PIEP) submitted in accordance with the reporting requirement pursuant to Section 1, Chapter 5 FSSLA 2011 (pg. 20, line 16-18), which expresses an intent that the Municipality of Anchorage to submit quarterly progress reports detailing cost overruns and significant project scope changes. During the current reporting period there have been no cost overruns or significant project scope changes. However, there have been important developments in the progress of the Project, which are described herein.

Additional information is available on www.portofalaska.com or by request. Please do not hesitate to contact me if you require any further assistance.

Sincerely,

Dan Sullivan
Mayor

December 4, 2013

PORT OF ANCHORAGE INTERMODAL EXPANSION PROJECT SFY 14 REPORT TO THE LEGISLATURE

INTRODUCTION

This report describes the progress made since our last report toward achieving the objective of putting the scaled back Port of Anchorage Intermodal Expansion back on track.

TWO PROJECT-RELATED REPORTS OF NOTE

On August 2, 2013 the Office of Inspector General of the United States Department of Transportation released an Audit Report that addressed MARAD's project oversight, risk management, document management and contract management practices for the Port of Anchorage Intermodal Expansion Project. ("the Project") The report found that MARAD was responsible for contract oversight and compliance at the Port of Anchorage Project, and that the Project suffered from significant problems "stemming from MARAD's inadequate planning, lack of reliable cost estimates, and noncompliance with Federal contracting requirements."

A copy of the USDOT Inspector General internal audit can be found on the Port's web site at:

<http://www.portofalaska.com/images/documents/marad%20oversight%20of%20port%20infrastructure%20development%20projects8-2-13.pdf>.

On August 7, 2013 the highly regarded national engineering firm of Simpson Gumpertz & Heger (SGH) released an Executive Summary of its independent peer review evaluation of the CH2M Hill Suitability Study of the Open Cell Sheet Pile (OCSP) structures designed by PND Engineers, Inc., (PND) for the Port of Anchorage. The fundamental findings of this peer review were that the method of analysis used by PND was insufficient, resulting in the following conclusions: (1) the existing OCSP structures at North Extensions 1 and 2 do not satisfy design criteria set for this Project as to static global stability; (2) the existing OCSP structures at North Extensions 1 and 2 do not satisfy design criteria for global stability under seismic conditions; and (3) the conclusions of CH2M Hill regarding the foregoing are reasonable.

A copy of the executive summary from the SGH can be found on the Port's web site at:

http://www.portofalaska.com/images/documents/Expansion_Briefing_Booklet/sgh%20peer%20review.pdf

The release of these two reports confirmed what Mayor Sullivan's administration has long believed; that MARAD failed to properly administer the Project, and in so doing allowed a facility to be constructed that suffers from such serious design and construction flaws that it cannot be used for its intended purpose. In response, the Municipality has taken important steps to regain control of the Project and recover money expended by MARAD and its contractors on work that will have to be replaced.

MOA FILES LAWSUIT IN ANCHORAGE SUPERIOR COURT

On March 8, 2013 the Municipality of Anchorage filed suit in Anchorage Superior Court against Integrated Concepts and Research Corp. (ICRC), PND Engineers Inc., and CH2MHill Alaska Inc., as successor in interest

to Veco Alaska, Inc. (Veco). Veco was involved when the OCSP design was reviewed and approved for the Project. CH2M Hill later acquired Veco and inherited Veco's potential liabilities. The lawsuit seeks damages caused by the faulty design and mismanagement identified in the Suitability Study and other project records.

A copy of the Complaint is available on the Port's website:

<http://www.portofalaska.com/images/documents/complaint%20-%20with%20case%20no%20etc.pdf>.

MEMORANDUM OF AGREEMENT

The Municipality and MARAD entered into two agreements related to management of the Project. The first was signed in March 2003 and the second was signed in 2011. Both agreements have now expired and the Municipality has rejected MARAD's proposed substitute. *See*, Letter of July 18, 2012 from Municipal Attorney Dennis Wheeler to Franklin Parker, Chief Counsel, Maritime Administration. The position of the Municipality continues to be (1) any future non-federal funds used on the Project will be administered by the Municipality, not MARAD; and (2) any funds still in the possession of MARAD must be used for the Project. A copy of Mr. Wheeler's letter is attached.

The Municipality now exercises complete control over the Project and determines how state and local funds are utilized.

REQUEST FOR PROPOSAL (RFP) FOR PROJECT MANAGEMENT SERVICES

On September 6, 2013 the Municipality released a Request for Proposals (RFP) to provide project and construction management services for the Project. The RFP seeks highly qualified consultants to provide project administration and controls, planning and design management, permitting and permit compliance management, construction management and quality assurance/quality control during design and construction. Proposals were received on October 16, 2013, interviews of the top three proposers are scheduled and we hope to have the successful company under contract by January 2014.

An important goal of the Municipality in securing a nationally qualified Project Management Consultant is to avoid the mistakes of MARAD and ICRC in the past. Toward that end, project delivery methods will be developed to insure high quality, efficient work and direct lines of responsibility. In addition, adequate protection against loss will be secured through diligent quality control, insurance and bonding.

FUNDING

Table 1: Funding Snapshot as of September 30, 2013

Total funds contributed to PIEP	\$439 million
Total funds transferred to MARAD	\$302 million
Total misc. expenditures	\$ 7 million
Total funds un-obligated	\$130 million

For a summary of the Expansion Project's funding to date please see Appendix A.

CONCLUSION

The Internal Audit Report of the DOT Inspector General clearly lays responsibility for past project failures with MARAD and its subcontractors. The Municipality will not repeat those mistakes. The Municipality has also gone to extraordinary lengths to evaluate the adequacy of the design and construction to date and intends to move the Project forward with an unimpeachable design constructed in accordance with the best practices of the industry. The steps being implemented will ensure increased local control and accountability by all parties.

APPENDIX A: FUNDING SUMMARY

Of the \$439 million dedicated to PIEP, \$302 million has been transferred to MARAD. The balance remains in the possession and control of the Municipality of Anchorage.

Table 1: Funding Snapshot as of March 31, 2013

Total funds contributed to PIEP	\$439 million
Total funds transferred to MARAD	\$302 million
Total misc. expenditures	\$ 7 million
Total funds un-obligated	\$130 million

Table 2: State funds received and Port funds contributed to date

Year	Amount	Legislation	Port Amount
2002	\$ 5,853,658	SB 29	\$ 2,443,857
2004	\$ 436,505	SB 283	\$ 8,188,000
2005	\$ 10,000,000	SB 46	\$ 4,125,000
2006	\$ 10,000,000	SB 231	\$ 8,000,000
2008	\$ 25,000,000	SB 221	\$ 22,282,541
2009	\$ 20,000,000	SB 75	\$ 22,100,000
2010	\$ 20,000,000	SB 230	\$ 4,000,000
2011	\$ 30,000,000	SB 46	\$ 4,000,000
2012	\$ 48,500,000	SB160	\$ 5,158,000
2012	\$ 50,000,000	GO Bond	
Total	\$219,790,164		\$ 80,297,398
Grand Total			\$300,087,562

Table 3: Federal funds received to date

Year	DoD	FHWA	FTA	SDDC
2002	-	\$ 9,568,421	\$2,832,968	
2003	\$ 4,850,000	\$ 590,500	\$2,862,505	
2004	\$ 4,850,000	\$1,371,058	\$5,181,803	
2005	\$12,003,750	\$4,729,584	-	
2006	\$ 8,245,000	\$5,349,258	\$5,577,500	
2007	\$ 9,700,000	\$6,030,856	\$5,820,000	\$1,951
2008	\$10,804,618	\$6,052,337	\$6,305,000	
2009	\$10,000,000	\$8,929,635	\$6,547,500	
2010	-	-	\$ 472,390	
2011	-	-	-	
2012	-	-	-	
Total	\$60,453,368	\$42,621,649	\$35,599,666	\$1,951
Total Funds	\$138,676,634			

MUNICIPALITY OF ANCHORAGE



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Mayor Dan Sullivan

August 19, 2013

VIA E-MAIL - Franklin.Parker@dot.gov

Franklin Parker
Chief Counsel
Maritime Administration
U.S. Department of Transportation

Re: MarAd Draft Agreement for the
Port Intermodal Expansion Project
Department of Law Matter No. L13-0796A

Dear Mr. Parker:

This is in response to Mr. Jaenichen's letter to the Mayor dated July 18 and its enclosed draft agreement. It has been some 7 months since the Municipality sent a draft agreement to MarAd for consideration. Nowhere in MarAd's correspondence of July 18 does it address the draft we sent MarAd or explain why the long delay.

In our draft we addressed critical issues regarding the ongoing and future relationship between us. For example, we created assurances that both parties would fully cooperate with each other; that the Municipality could assert and resolve claims for past work on its property and affecting its operations as it deems necessary; that your agency would be transparent in its conduct, to include providing quarterly reports and regular accountings on how it is using our funds; that our funds would be used for our purposes; that MarAd would keep and provide project records; and that each side would have all rights and remedies at law and in equity. These terms are recognized as part of any normal relationship where one party is managing the funds and projects for the benefit of another. Nowhere in MarAd's correspondence or draft agreement are these issues addressed; there is not even the courtesy of explaining why MarAd is refusing to include any of our recommended language. It is as if MarAd never even considered our draft. I certainly expected more after MarAd has had our draft all these many months.

There is nothing of particular substance in MarAd's draft, except an effort by MarAd to completely absolve itself of any responsibility for the Project and a continual assertion that MarAd is entitled to manage all non-federal funds. I can't think of any good reason for the Municipality to accept MarAd's proposal. MarAd has divorced itself from any responsibility for the Project, asserts that it was merely a financing mechanism, settled claims without the Municipality's prior knowledge or consent using funds designated for the Project, and now wants to remain a player, but only on unequal terms. I doubt very much that you would agree to these terms if you were in our position.

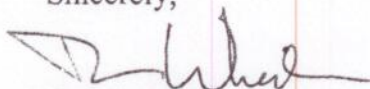
August 19, 2013

The Municipality maintains that MarAd's take on Section 10205 of Public Law 109-59 is incorrect. Certainly, any future non-federal funds (other than those that are part of a required "match") need not be administered through MarAd. I challenge you to identify how passing such funds through your agency would add any value whatsoever to the Project.

The Municipality further maintains that the statement in your draft that "Federal funds are no longer available for future work on the Project" is not acceptable. MarAd may still hold funds or be responsible for federal funds that can and should be used on the Project. Future federal funds are not highly likely, but given the Port's strategic importance and central role in Alaska commerce, are still possible. Any agreement should address this issue. The Municipality cannot agree to unclear and ambiguous language.

I note that MarAd's staff and legal counsel have, suddenly after 7 months, been urgently calling and emailing municipal staff regarding MarAd's draft agreement. This sudden urgency, without explanation, concerns me. It may have been an effort to represent the agreement to the Inspector General as some proof of MarAd's effort at righting the ship on this Project, but to my way of thinking the document itself falls far short of meeting the Inspector General's Audit recommendations, including MarAd's own assertion that it will "identify specific roles, responsibilities and relationships of public and private stakeholders."¹ I hope MarAd will now take the time to explain why our draft is not a more reasonable approach to a government-to-government working relationship in light of the Audit. I look forward to your draft that incorporates the elements provided in our earlier draft and better meets the intent of the Audit's recommendations.

Sincerely,



Dennis A. Wheeler
Municipal Attorney

cc: Mayor Sullivan
George Vakalis, Municipal Manager
Richard Wilson, Director, Port of Anchorage
Mitchell Behm, Assistant Inspector General for Rail, Maritime,
Hazmat Transport, and Economic Analysis, US DOT

¹ Audit Report CR-2013-117, Appendix, Agency Response (August 2, 2013).