

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 8c

Date of Meeting February 10, 2004

DATE: March 2, 2004

TO: M. R. Dinsmore, Chief Executive Officer

FROM: Paul M. Bintinger, Senior Port Counsel
Michael Mequet, Manager, Construction Services

SUBJECT: Request for Chief Executive Officer authority to execute a settlement agreement resolving all claims in litigation related to the Central Mechanical Upgrade Project (“the Project”) and finally accepting the Project.

BUSINESS STRATEGIES FOR 2003-2007

This project supports the Ports strategy to “Ensure Airport and Seaport Vitality”.

BACKGROUND

The Central Mechanical Plant Upgrade Project (MC-0306426), part of the Seattle-Tacoma International Airport’s (Airport) Infrastructure Program, involved (among other things) the upgrade to several major secondary unit electrical substations located in the immediate vicinity of the Airport’s central mechanical plant. The Project was marked by delays from its commencement. Although there were other contributing causes, the delays pertained primarily to the secondary unit electrical substations. Although the Project was successfully completed and accepted by the Port, the Project was completed 286 days behind project schedule.

Two lawsuits were commenced relating to the Project. Those lawsuits were consolidated into a single action pending in King County Superior Court under the caption, *Consolidated Electrical Distributors, Inc. v. Berschauer Phillips Construction Company, et al*, No. 02-2-35155-7SEA. That consolidated lawsuit involves claims, counterclaims and cross-claims by the Port, the Project contractor, the Project electrical subcontractor, and certain materials suppliers and manufacturers.

The proposed settlement is a global settlement, resolving all claims asserted in the litigation. The settlement was reached in an all-day mediation that occurred on January 26, 2004 before Randy Wulff, a well-respected commercial mediator from the San Francisco Bay Area. Under the terms of the settlement directly relevant to the Port, the Port agrees to forego any claim for liquidated damages and claims costs and pay to the Project contractor the sum of \$310,000. The settlement agreement also includes a release of all claims by and against the Port and provides for the final acceptance of the Project by the Port.

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M. R. Dinsmore, Chief Executive Officer

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REQUESTED ACTION

Request for Chief Executive Officer authority to execute a settlement agreement resolving all claims in litigation related to the Central Mechanical Upgrade Project and finally accepting the Project.