



Agenda Item No. 4

To: Finance-Auditing Committee/Committee of the Whole
Meeting of October 12, 2007

From: James P. Swindler, Deputy General Manager, Ferry Division
Joseph Wire, Auditor/Controller
Celia G. Kupersmith, General Manager

Subject: **APPROVE ACTIONS RELATIVE TO CONTRACT NO. 2007-FT-7,
VESSEL REFURBISHMENT, WITH BAY SHIP & YACHT CO.**

Recommendation

The Finance-Auditing Committee recommends that the Board of Directors approve the following actions relative to Contract No. 2007-FT-7 *Vessel Refurbishment*, with Bay Ship & Yacht Co.:

1. Authorize execution of a Change Order with Bay Ship & Yacht Co. for payment in the amount of \$245,988.41 to pay the requisite California State sales tax and,
2. Authorize a budget increase in the FY 07/08 Ferry Transit Division Capital Budget in the amount of \$346,000.00 to cover sales tax and project close-out costs, with the understanding that the increase will be funded from District reserves for a total project budget of \$7,871,000.00.

Summary

As part of the construction contract the shipyard purchased and manufactured certain items that are subject to California State sales tax. Our bid specifications and contract documents stated that bidders were not to include sales tax with their bid price, but were to invoice same with regular progress payments. Unfortunately the shipyard did not invoice sales tax with their regular progress invoices, but instead they recently submitted a detailed invoice in the amount of \$245,988.41 for the total sales tax due on this project. We are presently completing review of the supporting documentation that accompanied the invoice, but we anticipate that all items listed are subject to sales tax payable by the District. The shipyard has indicated they have submitted payment to the State of California for the amount due.

In addition to the budget increase necessary to pay the required sales tax, we propose to discuss with the committee certain claims that have arisen and which require resolution before the project can be closed out. One matter involves a claim by the District against Elliott Bay Design Group LLC (EBDG) (the Districts Naval Architect on this project). The other matter involves a

claim for the delays submitted by Bay Ship and Yacht Co.(BS&Y) against the District. The Attorney has recommended that these matters be discussed in closed session as they may give rise to potential litigation.

Fiscal Impact

This project was included in the FY 06/07 Ferry Division Capital Budget in the amount of \$7,525,000.00 and is 80% grant funded. To date all available budget has been expended, and a capital budget increase of \$346,000.00 is requested, to be funded from District reserves. The detailed budget is as follows:

Design and bid support (consultants and staff)	\$699,300.00
Contract 2007-FT-7	\$6,699,632.00
Budget Adjustment	\$346,000.00
Miscellaneous (staff time, travel, mailing, etc.)	<u>126,068.00</u>
TOTAL BUDGET	\$7,871,000.00

Background

In October of 2006 the District awarded a contract in the amount of \$6,199,632.00 to Bay Ship & Yacht Co. for the complete refurbishment of the a Spaulding Vessel, the M.S. Marin. To accommodate additional work necessary as a result of drawing errors, in April 2007, the shipyard budget was revised to \$6,699,632.00, along with a slight increase to the staff budget as well.

In June of 2007 the completed vessel was delivered to the District at the Larkspur Ferry Terminal. Beginning in July 2007 the vessel was placed in to regular service on the Sausalito route, where she has been well received by both the traveling public and crew. The M.S. Marin has become so popular with the Sausalito commuters that we receive complaints whenever we substitute another vessel in its place.

At the present time we are we in discussions with both EBDG and BS&Y in and effort to resolve any remaining contract issues.