



Executive Director's  
Report to the

Board of Harbor Commissioners

**DATE: JANUARY 17, 2018**

**FROM: PORT PILOTS**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - FIRST AMENDMENT TO CONTRACT KNC NO. 80300038 BETWEEN AND AMONG THE CITY OF LOS ANGELES HARBOR DEPARTMENT, KONGSBERG NORCONTROL IT AS, MARINE EXCHANGE OF SOUTHERN CALIFORNIA AND JACOBSEN PILOT SERVICE, INC. FOR MAINTENANCE AND SUPPORT SERVICES FOR THE VESSEL TRACKING SYSTEM**

**SUMMARY:**

Staff requests the Board of Harbor Commissioners (Board) to ratify and approve a First Amendment (First Amendment) to Contract KNC No. 80300038 between and among the City of Los Angeles Harbor Department (Harbor Department), Kongsberg Norcontrol IT AS (Kongsberg), Marine Exchange of Southern California (Marine Exchange) and Jacobsen Pilot Service, Inc. (JPS) for maintenance and support services of the Kongsberg Vessel Tracking System (VTS). The VTS is a single system from Kongsberg that is used by the Harbor Department, Marine Exchange and JPS to help improve safety and efficiency of port operations by providing situational awareness of vessel movements in the San Pedro Bay port complex. The VTS is a proprietary system that only Kongsberg can maintain and support.

Contract KNC No. 80300038 is a five-year contract for VTS maintenance and support that has existed since June 1, 2015, however, the contract was only between Kongsberg as VTS supplier and the Marine Exchange as Customer. The proposed First Amendment will amend Contract KNC No. 80300038 to add the Harbor Department and JPS, thereby including all parties that use and maintain the VTS. The proposed First Amendment also clarifies existing terms and conditions of Contract KNC No. 80300038 to comply with City of Los Angeles requirements. Contract KNC No. 80300038 includes a one-year option to extend, followed by continuing one-year options on every anniversary of the commencement date. However, staff requests in this Resolution, the Board approve the five-year term plus up to five one-year options for a total term of up to ten years. The Harbor Department would not exercise further options without further Board and City Council approvals.

Board ratification is necessary because the Harbor Department has received and paid for VTS services in the amount of \$342,356 since June 1, 2015. City Council approval

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ratification is also required for the ten-year term, inclusive of options, under Charter Section 373 and Administrative Code Section 10.5.

The Harbor Department's share of the proposed Agreement is estimated to be up to \$449,856 over the initial five-year term, inclusive of payments already made, and is estimated to be up to \$585,000 over the five years of options. The proposed First Amendment includes a provision for the Executive Director to increase the not-to-exceed amount by up to an additional \$150,000 in the aggregate for unanticipated changes over the entire ten-year term.

Kongsberg is headquartered in Horten, Norway.

Payment of the Harbor Department's share of the expenditures under the proposed Agreement is the financial responsibility of the Harbor Department.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles city CEQA Guidelines;
2. Find that in accordance with the Los Angeles City Charter Section 1022, it is more feasible for outside contractors to perform this work than City employees;
3. Find that the proposed First Amendment qualifies for award on a sole source basis as a contract for the performance of professional, technical and special services of a temporary or occasional character for which competitive bidding is not practicable or advantageous, pursuant to Los Angeles City Charter, Section 371(e)(2) and Los Angeles Administrative Code Section 10.15(a)(2);
4. Ratify and approve the First Amendment between and among the Harbor Department, Kongsberg, Marine Exchange and JPS for a five-year term, from June 1, 2015 to May 31, 2020, with five one-year options to extend the term to an aggregate of ten years; for an amount not-to-exceed \$692,500, and authorize the Executive Director to increase the not-to-exceed amount by up to an additional \$150,000 in the aggregate for unanticipated changes;

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5. Direct the Board Secretary to transmit the Agreement to the Los Angeles City Council for approval and ratification pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;
6. Authorize the Executive Director to execute and the Board Secretary to attest said First Amendment, upon approval by the City Council; and
7. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background and Context – The VTS is a single system from Kongsberg that is used by the Harbor Department, Marine Exchange and JPS to help improve safety and efficiency of port operations by providing situational awareness of vessel movements in the San Pedro Bay port complex. It is a proprietary system that only Kongsberg can support and maintain.

The VTS technology was first installed in 1993 for the San Pedro Bay port complex. VTS support and maintenance, including repairs and upgrades, have been paid in the past with separate purchase orders and affidavits for expenditures. On May 19, 2015, Kongsberg and the Marine Exchange entered into Contract KNC No. 80300038 for support and maintenance of the VTS. However, the Harbor Department and JPS are not named parties of this contract, despite the intention that the Harbor Department, Marine Exchange and JPS are all customers of Kongsberg. Costs for VTS support and maintenance are shared among the Harbor Department, Marine Exchange and JPS based on the equipment, hardware and software each party has installed for their operations, but this methodology was not formalized in Contract KNC No. 80300038.

Proposed First Amendment – The proposed First Amendment (Transmittal 1) will amend Contract KNC No. 80300038 to add the Harbor Department and JPS to formalize the relationships between and among the Harbor Department, Kongsberg, Marine Exchange and JPS. The proposed First Amendment also clarifies terms and conditions of Contract KNC No. 80300038 to comply with City of Los Angeles requirements. The business terms of Contract KNC No. 80300038 will apply to the Harbor Department, with minor changes as set forth in the First Amendment.

The term of the proposed Agreement is five years, from June 1, 2015 to May 31, 2020, plus one option to extend the term for an additional year followed by continuing one-year options on every anniversary of the commencement date. However, staff requests in this Resolution, the Board approve the five-year term plus up to five one-year options for a total term of up to ten years. The Harbor Department would not exercise further options without further Board and City Council approvals.

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The formula for determination of the three customers' shares of payment (including the Harbor Department) of the shared VTS cost has now been formalized in ANNEX 4 to the First Amendment. Marine Exchange continues to operate as customer billing administrator to distribute bills and collect and remit to Kongsberg.

The amount for the Harbor Department's share of the proposed First Amendment is not-to-exceed \$692,500 over the remaining eight-year term, inclusive of options. The not-to-exceed amount is based on estimates for the following expenditures.

- **Support and Maintenance:** The proposed First Amendment amount includes the Harbor Department's share of the annual fee for VTS support and maintenance. The total VTS annual support and maintenance fee for the current year is \$97,500, with the Harbor Department's share being \$30,774. Future pricing may be increased or decreased based on equipment changes and the Producer Price Index Data from the Bureau of Labor Statistics. The estimated amount for the Harbor Department's share of annual VTS support and maintenance over the remaining term of the proposed First Amendment is \$332,500.
- **Repairs:** Over the remaining term of the proposed First Amendment, the VTS is anticipated to require repairs that are in addition to the base VTS support and maintenance per the service level agreement from Contract KNC No. 80300038. The estimated amount for repairs over the remaining term of the proposed First Amendment is \$30,000.
- **Upgrades and Replacements:** The VTS is expected to require upgrades and replacements over the remaining term of the proposed First Amendment. This work will be coordinated and scheduled with all parties as needed. The estimated amount for the Harbor Department's upgrade and replacement costs is \$330,000.

The proposed First Amendment includes a provision for the Executive Director to approve an increase in the Harbor Department's not-to-exceed amount by up to an additional \$150,000 in the aggregate for unanticipated changes.

Expenditures based on actual needs will be incurred only when the Harbor Department authorizes an order. However, the Harbor Department is not committed to spending this entire not-to-exceed amount.

Ratification – This action recommends that the Board ratify the past VTS services requested and payments made by the Harbor Department in the amount of \$342,356 under Kongsberg KNC Contract No. 80300038 since June 1, 2015. Under established law, the Board is not required but it may, in its sole discretion, legally ratify previously unauthorized requests and payments after-the-fact, if it could have originally authorized

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such contracts at the inception. Here, the Board, with City Council approval under Charter Section 373 and Administrative Code Section 10.5, had the authority in May 2015 to have approved Kongsberg KNC Contract No. 80300038. Therefore, while the Kongsberg KNC Contract No. 80300038 lacked proper City authorizations, the Board and City Council can now, in their discretion, ratify and approve to add the Harbor Department as party, as well as payments made; with the result having the effect of a duly adopted First Amendment with the Harbor Department as a signatory party as though it had been adopted as of June 1, 2015.

Sole Source Justification - The Harbor Department recommends sole source selection of Kongsberg for the following reasons: The VTS is a proprietary system only available through Kongsberg, which has provided VTS to the Harbor Department since 1993. VTS is unique and was specially developed for the San Pedro Bay and updated to meet the needs of the Harbor Department, Marine Exchange and JPS over the years. Furthermore, it is not feasible for the Harbor Department to have a separate system from the Marine Exchange and JPS. Therefore, a competitive Request for Proposal for another system or supplier is not practicable or advantageous. The Harbor Department Information Technology Division continues to believe that it is not economically feasible nor time efficient to internally develop a port-owned VTS system replacement.

Charter 1022 Determination - As part of the 1022 process, the Contracts and Purchasing Division (CPD) asked the other City of Los Angeles (City) Departments if they had City staff that could do this work. For the Departments that did respond to CPD's inquiry, they stated that they do not have available staff. A few City Departments did not respond, which is understood to mean that they cannot provide staff. More importantly, the VTS proprietary computer system is owned, operated and maintained by Kongsberg, so such services must be performed by the proprietary system supplier's staff.

Kongsberg is headquartered in Horten, Norway.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action the approval of a First Amendment with Kongsberg, Marine Exchange, and JPS for maintenance and support services of the VTS. As an administrative activity, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

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**FINANCIAL IMPACT:**

Approval of the proposed First Amendment authorizes the Port Pilots Division to retain VTS support and maintenance services with a not-to-exceed limit of \$692,500. As part of the annual budget process, Fiscal Year 2017/2018 funds in the amount of \$35,000 were budgeted in the Port Pilots Division (Center 0414, Account 54030, Program 000). Upon Board approval, funding for future fiscal years will be requested to be budgeted as shown in the table below:

| <b>Fiscal Year</b>   | <b>Proposed Amount</b> |
|----------------------|------------------------|
| 2017/2018            | \$ 35,000              |
| 2018/2019            | \$ 35,000              |
| 2019/2020            | \$ 37,500              |
| 2020/2021            | \$ 400,000             |
| 2021/2022            | \$ 42,500              |
| 2022/2023            | \$ 45,000              |
| 2023/2024            | \$ 47,500              |
| 2024/2025            | \$ 50,000              |
| <b>Not-To-Exceed</b> | <b>\$ 692,500</b>      |

The proposed amount in Fiscal Year 2020/2021 includes the anticipated VTS upgrade and equipment replacement.

The actual expenditures may differ from the estimated amounts in any given fiscal year presented in the table above. However, the total aggregate amount will not exceed \$692,500, unless the Executive Director authorizes the not-to-exceed amount to increase by up to an additional \$150,000 for unanticipated changes. If the Executive Director authorizes an increase in the not-to-exceed amount, then funds will be provided from the Port Pilots Division or, if not available, then from trade-offs within the approved Harbor Department budget. The Harbor Department is not committed to spend the entire not-to-exceed amount. Expenditures are based on an as-needed basis.

Office space for one to two consultants will be used intermittently within the space reserved for the Port Pilots Division. The office space will be used only when on-site work is required. Staff will not be displaced.

A Termination for Non-Appropriation of Funds Clause (also known as a Funding Out Clause) is included in the First Amendment.

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**CITY ATTORNEY:**

The Office of the City Attorney has approved the First Amendment as to form and legality.

**TRANSMITTAL:**

1. First Amendment to Contract KNC No. 80300038 / Agreement Between and Among the Harbor Department, Kongsberg, Marine Exchange and JPS [Contract KNC No. 8030038 is set forth in full in "Annex 1" to the attached First Amendment]

FIS Approval: MB (initials)  
CA Approval: JML (initials)



JOHN L. DWYER  
Chief Port Pilot



THOMAS E. GAZSI  
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APPROVED:



EUGENE D. SEROKA  
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JD:lk