

**INFORMATIONAL REPORT**

**Proposal to Issue Request for Proposals for Howard Terminal (Berths 67-68)**

**September 26, 2013**

Staff will provide a report on their proposal to issue a Request for Proposals (RFP) for Howard Terminal (Berths 67-68). Additional information will be provided in a supplemental posting.

**INFORMATIONAL REPORT****Request for Proposals – Howard Terminal (Berths 67-68)****September 26, 2013**

The Maritime Division recommends the issuance of a Request for Proposals (“RFP”) for maritime uses at Howard Terminal (Berths 67-68; the “property”). This recommendation is based on the following key reasons:

- Urgency of revenue
- Diversification of maritime activity at the seaport
- Entitlement and regulatory framework currently governing use of the property

This report outlines staff’s approach for the RFP and requests input from the Board of Port Commissioners (“Board”), including scope, timeline, and any other matters.

**Background**

Pursuant to the Settlement Agreement amongst SSAT<sup>1</sup>, SSAT Oakland, and the Port dated July 18, 2013 (the “Settlement Agreement”) and the Termination Agreement between SSAT and the Port (the “Howard Termination Agreement”) terminating SSAT’s NEPAA at Howard Terminal, SSAT is required to vacate Howard Terminal with the understanding that the Matson Navigation operations will move to the Berths 60-63 terminal. While originally anticipated to occur on October 1, 2013, this relocation may occur as late as January 2014.

Given the impending vacancy of Howard Terminal, there is urgency to maintain business and revenue continuity for the property. As such, staff proposes to issue an RFP for Howard Terminal as expeditiously as possible and to limit such solicitation to maritime-related uses of the property.

**Land Use Considerations**

Staff proposes the RFP be limited to maritime and maritime-related uses, as opposed to all potential uses, given the following considerations and constraints:

**Urgency of Revenue**

With the loss of about \$10 million/year of revenue at Howard Terminal starting October 1, 2013, finding a new tenant that can quickly establish operations and pay rent to the Port is critical. Because the property is already generally permitted and entitled for maritime and maritime-related uses, maintaining land use consistency will help expedite occupancy. However, it should be noted that even some maritime uses may require additional entitlement work; for example, construction of extensive break bulk facilities may require some California Environmental Quality Act (“CEQA”) analysis and permitting work. This work, however, is expected to be relatively limited as compared to non-maritime uses of the property.

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<sup>1</sup> The term “SSAT” in the Settlement Agreement refers to both SSA Terminals, LLC and SSA Terminals (Oakland), LLC. However, for purposes of this report, “SSAT” refers to SSA Terminals, LLC, and “SSAT Oakland” refers to SSA Terminals (Oakland), LLC.

**Diversification of Maritime Activity**

Howard Terminal provides an opportunity to diversify cargo type within the seaport. While the property may no longer be suitable for long-term container terminal operations due to the size, location, and other features of the property, it could be utilized for other maritime related uses such as break bulk, ro-ro autos/equipment, refrigerated cargo. These uses may yield revenue and/or indirect business benefits that the Port does not currently capture, which could help diversify the Port's maritime business model as well as marginally reduce exposure to future risk from over-reliance upon container terminal operations alone.

**BCDC Seaport Plan**

Howard Terminal is included in the Bay Conservation and Development Commission ("BCDC") Seaport Plan as a "Port Priority Use" area. This designation is based on a Bay-wide study performed by BCDC periodically to determine whether enough capacity exists across all Bay Area ports to accommodate anticipated cargo growth in the long-term future. Using Howard Terminal for non-maritime uses conflicts with this designation, and de-designation of lands from Port Priority Use requires a Seaport Plan amendment, which is a fairly lengthy and involved process. To pursue an amendment, the Port would be required to provide evidence that sufficient capacity exists within the remaining Port seaport properties, or elsewhere within the Bay Area Port priority lands, to support the long term maritime growth demands for the region. BCDC would then independently analyze that information before proceeding with an amendment.

**Tidelands Trust Compliance**

Howard Terminal is currently encumbered by the Tidelands Trust. Uses of the property are therefore generally limited to water oriented commerce, navigation, fisheries, and regional or state-wide recreational uses. Approval from the State Lands Commission would be required for any uses of the property that are not Tidelands Trust compliant. Many non-maritime activities are not considered Trust compliant uses and thus may require lengthy negotiations with the State Lands Commission, and potential legislation, before the Port could proceed with such non-Trust uses for the property.

**Other Entitlement, Environmental & Regulatory Issues**

Howard Terminal is subject to a complex set of regulatory permits and deed restrictions related to the hazardous materials in the soil and groundwater underlying the property. Development of new structures that penetrate the ground surface or changes in land use will require notices to regulatory agencies, and compliance with existing health, safety and soil management plans. Non-maritime uses will likely require extensive and expensive clean-up or other protective environmental measures, precluding expeditious turn-over of the property to a new rent-paying tenant. Further, non-maritime uses will likely require numerous land use entitlements including local land use permits, an amendment to the Oakland General Plan, and CEQA review. These activities could take several years to complete.

**Proposal Evaluation**

In order to review and evaluate proposals as expeditiously and meaningfully as possible, the scope of the RFP must be well defined. Staff believes that the "maritime only use" category will allow for diverse proposals while ensuring a robust evaluation process. Broadening the RFP scope further would complicate the evaluation process.

**RFP - Scope**

Staff proposes to structure the RFP in a manner that allows for diverse responses within the confines of maritime and maritime-related uses. Key scope elements will include:

**Permitted Uses:** Maritime port uses, including, without limitation, the following: (i) container terminal; (ii) ro-ro auto and vehicle processing; (iii) ro-ro equipment; (iv) break-bulk; (v) refrigerated cargo & warehousing; (vi) lumber, steel and building materials; (vii) local dry bulk – aggregate, cement; (viii) other dry bulk industrial products; (ix) dry bulk agricultural & forest products; (x) marine construction and vessel services; and (xi) truck parking or chassis/empty container storage. Uses that have significant adverse impacts, including, but not limited to, operational impacts on maritime activities elsewhere in the seaport, as determined by the Port, will not be considered.

**Term:** To be determined by Proposer; maximum of 66 years allowed.

**Site Improvements:** Performed by tenant at tenant’s sole cost; property would be leased “as-is.” Tenant responsible to obtain all applicable permits and other entitlements.

**Payment Structure:** Monthly minimum rent, with or without “up side.”

**RFP – Selection Process**

Staff proposes to negotiate with up to three proposers. Because the proposals may be diverse in nature, the content and key issues for the negotiations that follow the initial selection of the top proposer(s) will be shaped by the proposed uses of the property. The following key criteria will guide the selection process; however the Port reserves the right to exercise broad discretion in the review and evaluation of all proposals received.

1. Compliance with stated maritime uses of the property and compatibility with other current uses at the seaport
2. Amount of minimum annual rent to the Port
3. Financial capacity of proposer to operate/develop property
4. Timing of occupancy (sooner is better)
5. Demonstrated experience to operate/develop property
6. Job generation, quality/type of jobs, and environmental considerations
7. Local participation and compliance with applicable Port policies

**RFP – Schedule & Next Steps**

Staff is proposing a relatively aggressive schedule for the RFP process, based on the following approximate milestone dates. This schedule may need to be revised based on the proposals received, the number of proposers with whom the Port chooses to negotiate, and the complexity of the proposals under consideration.

September 26, 2013	Informational report to Board
October 4, 2013 (on or about):	Issue RFP, subject to extent of input from the Board on 9/26/13
December 5, 2013 (or 60 days after issuance)	Proposals due
December 2013	Identify short list of proposers, if appropriate responses received
January 2014	Start negotiations (or evaluate options for tenancy if RFP process did not result in desirably responses)
March 2014	Conclude negotiations with winning proposer(s)
April 2014	Finalize deal documents (if negotiations were successful) and present to the Board for approval

If the proposed RFP process does not yield responses in line with Port's strategic goals, staff will return to the Board to discuss pursuing other available options.