



WASHINGTON PUBLIC PORTS ASSOCIATION

THE MANIFEST

MTCA GRANT ASSISTANCE FOR LOCAL GOVERNMENTS: SOLICITATION PERIOD OPENS FEB 5

Local governments may be eligible for grant assistance from the Department of Ecology to clean up contaminated sites as they begin to plan the 2019-21 cleanup budget.

As part of this process, every two years, local government financing needs for cleaning up contaminated sites are sourced in order to prepare the Model Toxics Control Act (MTCA) Accounts Ten-Year Financing Report and Ecology's 2019-21 capital budget request.

The solicitation period for these grants begins **Monday, February 5, 2018**. To be considered for grant funding and be included in the MTCA Ten-Year Financing Report to the Legislature, the Department of Ecology needs to receive your responses **by close of business Friday, March 2, 2018**.

For the first time, jurisdictions will submit solicitation responses through the Department of Ecology's Administration of Grants and Loans (EAGL). EAGL provides a streamlined process and transparency for both recipients and Ecology staff. To use EAGL, you need to set up a [Secure Access Washington](#) (SAW) account.

Local governments that were included in the [2016 MTCA Accounts Ten-Year Financing Report](#) will be contacted by email by Monday, February 5, 2018 notifying them of the solicitation. If your local government was not included in the 2016 report, but anticipates needing cleanup site funding over the next ten years, you can still apply.

If you have questions about site(s) in your jurisdiction, further information and contacts are available [here](#).

SPOTLIGHT

NEW STATE POLICY EASES MATCH ON PORT GRANTS FOR RECREATION

The state will begin accepting grant applications in February to build parks, trails, boating facilities and shooting ranges, as well as to conserve wildlife habitats and working farms and forests. A new policy for 2018 allows some local governments to reduce the amount of required resources contributed to projects for the Washington Wildlife and Recreation Program (local parks, trails and water access areas).

With the new policy, certain communities would have their required match reduced, some as low as 10 percent. To note, some communities must have a comprehensive plan in place by March 1 to apply for 2018 grants. A table of communities eligible for reduced match is available [online](#). Grants are available in the following categories:

- **Boating:** Grants to acquire, develop and renovate facilities including launch ramps, guest moorage and support facilities for motorized boats and other watercraft.
- **Parks:** Grants to buy land and develop parks, ball fields, sports courts, outdoor swimming pools and waterfront access areas for the public.
- **Shooting Ranges:** Grants to buy land and develop and renovate firearm ranges and archery training and practice facilities.
- **Trails:** Grants to maintain and develop trails.
- **Farmland Preservation:** Grants to preserve valuable farmland.
- **Forestland Preservation:** Grants to lease or buy voluntary land preservation agreements for forests to ensure they remain available for timber production.

EMPLOYMENT OPPORTUNITIES

Customer Service Rep II | Port of Port Townsend

Accounting Specialist/Accounts Payable | Port of Grays Harbor

Finance Manager | Port of Shelton

Real Estate and Business Development Director | Port of Olympia

Technician I, Accounting | Port of Tacoma

Business Development Manager | Northwest Seaport Alliance

Accounting Manager | Port of Ridgefield

Executive Director | West Plains/Airport Area Public Development Authority

Executive Director | Port of Othello

Senior Design Engineer | Port of Seattle

UPCOMING EVENTS

Spring Meeting | May 9-11, 2018
Hilton, Vancouver, WA

(Registration Opens March 2018)

Finance & Administration Seminar | June 13-15, 2018

Enzian Inn, Leavenworth

Director's Seminar | July 12-13

McMenamins Harbor Lodge, Kalama

Commissioners Seminar | July 22-24, 2018

Suncadia Resort, Cle Elum

Small Ports Seminar | October 18-19, 2018

Enzian Inn, Leavenworth

This month's column discusses those situations in which port districts need to require that port contractors purchase insurance under the United States Longshore and Harbor Workers Compensation Act (USL&H). This discussion was generated by a port district project manager that suggested this topic.

USL&H is a federal workers' compensation law that provides insurance for worker injuries. It is more expansive, more expensive and substitutes for Washington worker compensation coverage. Port districts need to require this insurance be procured for maritime construction, maritime work or maintenance projects at or adjacent to navigable waters. USL&H Act insurance is priced by the hours of maritime employment, is expensive and therefore increases the contract price, so it should only be required when it is, in fact needed. Moreover, if the insurance is not procured by the contractor the port district may be liable for a maritime worker's injury. This is a complicated area of law, so it is important to consult with port legal counsel when in doubt. With that caveat in mind here are the basic principles that apply.

There is a two-part test for the application of USL&H insurance. First, the work being performed must be "maritime employment" and second, the work must occur "on or over navigable waters." This two-part test is described as "status" (maritime employment) and "situs" (work on or over navigable waters) both of which must be present for USL&H coverage. "Maritime employment" includes building and repairing ships, loading and unloading ships, construction or repair of docks, piers, floats and other over water structures in navigable waters of the United States. Importantly USL&H specifically excludes government employees, including port employees, from the definition of maritime employees. "Situs" means work over navigable waters of the United States and adjacent areas to navigable waters. The term includes all saltwater where a boat can float and fresh water that has been deemed "navigable waters of the United States." Most rivers, Lake Washington, Lake Union, Lake Sammamish and Lake Chelan (designated a navigable water in 1929) are "navigable waters of the United States." A list is available from the USACE.

So, consider the following examples for construction or maintenance:

- A contractor is hired to install or repair marina floats at a saltwater marina. The two-part test of "maritime employment" and "situs" is met and USL&H coverage is required.
- A contractor is hired to repair the riprap inside the marina and install a new sidewalk on the land adjacent to the riprap. Likely any workers involved in placing the riprap

are "maritime workers" and the "situs" is over water, so USL&H insurance will be required. But, the subcontractor's employees hired to build the sidewalk likely may not need USL&H insurance and instead could cover its workers under Washington L&I. This will require a closer look.

- A contractor is hired to check the fire extinguishers on the floats in the marina. While the workers are working over water the work is not traditional "maritime employment" and therefore these employees likely do not need USL&H insurance. The difference here, is that checking fire extinguishers probably occurs all over town and is not a traditional maritime employment.
- A contractor that sweeps parking lots all over town is hired to run a sweeper on the port's dock. Here again, a close question. While the workers are working over water the work is not likely "maritime employment" and therefore these employees likely do not need USL&H insurance. But if the longshoreman run the port sweeper then it is "maritime employment" and USL&H insurance would be required.
- A port employee is tasked with repairing electrical systems in the marina. No USL&H insurance is needed since government employees are exempt.
- You bid a public work contract and the low bidder calls and says "USL&H what? – that seems expensive". Consider that a red flag and proceed carefully

Here are the steps that I recommend a port district take when deciding whether to require USL&H insurance in its bid documents and standard contracts:

- First, apply the two-part test of "maritime employment" and "situs" for any work on or near water to determine if USL&H insurance should be listed as required in the bid documents.
- Second, if there is any question, consult with legal counsel, the port's insurance broker and the Washington Department of Labor and Industries.
- Third, specify in the bid documents if USL&H coverage will or will not be required for all or part of the project. Since the insurance is expensive this avoids bidder confusion.
- Fourth, include language in the standard contract (or general conditions) to the effect that "USL&H insurance must be obtained if required in the bid documents" and specify such things as providing proof of insurance and a limited waiver of the contractor's liability protection. Then, when USL&H insurance is required in the bid documents, the standard contract will still work.

As always, please contact your port counsel with any questions regarding this topic. And, if you have a question for a Knowing the Waters please email me at fchmelik@chmelik.com.