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**FILED VIA EMAIL AND MAIL**

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**RE: The City of Los Angeles Harbor Department On-Call Underwater Hard Hat Diving Services – RAMP ID #215908**

Dear Purchasing and Contracts Analyst:

Subsea Global Solutions (SGS) US West Coast, LLC (“SGS”), by and through its undersigned counsel, Winston & Strawn LLP, hereby submits a timely supplemental protest based on documents received on February 11, 2025, from the Port of Los Angeles (“POLA” or the “Port”) related to the City of Los Angeles Harbor Department’s (“Harbor Department”) November 15, 2024 decision not to award a contract to SGS under Request for Proposal (the “RFP”) Regional Alliance Marketplace for Procurement (“RAMP”) ID #215908. To date, the Harbor Department has not responded to SGS’s bid protest dated November 15, 2024. Upon information and belief, SGS understands that the Harbor Department intends to award a contract pursuant to the RFP to American Marine Corporation (“American Marine”), an incumbent for over twenty years.

This supplemental protest, and the initial protest, comes on the heels of a previous protest of this same procurement (i.e., RAMP ID #213372), filed on May 20, 2024. After the Harbor Department’s receipt of the previous protest, the Harbor Department canceled the RFP on July 17, 2024, and issued the current RFP #215908 on July 19, 2024. Responses were due on August 5, 2024. After months of a

**CONTAINS CONFIDENTIAL, PROPRIETARY, AND COMPETITIVELY SENSITIVE  
INFORMATION EXEMPT FROM PUBLIC DISCLOSURE**

purported reevaluation, the Harbor Department's November 13, 2024<sup>1</sup> four-sentence Non-Selected Vendor Letter failed to address *any* of the concerns raised in the initial protest or provide SGS with any reason(s) why its bid was unsuccessful.

On November 18, 2024, SGS submitted a California Public Records Act ("CPRA") request seeking documents related to the evaluation of proposals and the Harbor Department's decision to exclude SGS from further consideration for a contract award under the RFP. On February 11, 2025, SGS received documents from the Harbor Department in response to its CPRA requests. This supplemental bid protest stems directly from new facts learned in those documents.

### INTRODUCTION AND SUMMARY OF PROTEST

SGS incorporates herein the factual background and arguments in its bid protest filed on November 15, 2024. The documents received by SGS, including American Marine's proposal and the scoring of American Marine's and SGS's proposals, confirm what SGS has stated in its first and second protests: the apparent selection of American Marine is not because it was the best-value offeror, but because of American Marine's nearly uninterrupted, decades-long run as the incumbent contractor for the Harbor Department. On the basis of the new arguments raised herein, as well as the protest grounds previously raised but not ruled on by the Harbor Department, SGS respectfully urges the Purchasing and Contracts Analyst to again review the procurement record and render a new contract-award decision in a manner consistent with the terms of the RFP. As detailed further herein, this award should not be permitted to stand for the following reasons:

*First*, the Harbor Department should have deemed American Marine's proposal nonresponsive and excluded it from consideration for award because its proposal failed to include mandatory RFP requirements—namely, to provide a copy of its safety program, describe its safety program, and provide accident reports from the last four years. In the alternative, American Marine should have received zero points for its safety program under Evaluation Factor C, a reduction that would have lowered its score well below SGS's. Instead, the Harbor Department turned a blind eye to American Marine's failure to meet these requirements and to the material safety concerns raised by its failure to provide details on its safety program. This failure includes the fact that American Marine concealed from the Harbor Department a fatality that recently occurred at the Port, directly violating the RFP requirement to disclose all accident reports from the past four years.

*Second*, even absent any revisions to the scoring of American Marine's proposal, the Harbor Department erred in selecting American Marine's higher-priced proposal for award without first conducting a tradeoff analysis to assess whether American Marine's substantially higher price was justified in light of the minuscule (less than .5%) scoring differential. Had the Harbor Department conducted such an analysis, it would have necessarily concluded that the .34-point advantage offered by American Marine, out of 100 points, did not justify the nearly 10% price premium in year 1 and even-

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<sup>1</sup> The Harbor Department emailed a copy of the letter to SGS on November 13, 2024. The letter itself, however, is dated November 12, 2024.

higher price premium in years 2 and 3 of contract performance. The record of the Harbor Department's evaluation contains no mention that it considered these facts, let alone justifies its decision to pay this price premium. Thus, the decision to award without this analysis renders the award decision arbitrary, capricious, and an abuse of discretion.

The documents produced by the Harbor Department in response to the CPRA request confirm SGS's protest allegations that the underlying evaluations were flawed. Thus, the resultant decision to exclude SGS and submit American Marine to the Board for approval of a contract award is also flawed. SGS was prejudiced by this improper evaluation of the proposals. The evaluation and resultant award decision largely ignored the contents of the proposals and instead simply erred on the side of incumbency, irrespective of cost to the taxpayer and safety to the persons involved in contract performance. At bottom, the contract award to an *inferior proposal at a price premium, to a vendor with serious and willful Occupational Safety and Health Administration ("OSHA") violations*, cannot be justified. For these reasons, expounded below, this protest must be sustained and a new award decision should be made to SGS.

#### TIMELINESS

The Harbor Department provided SGS with documents in response to its CPRA request on February 11, 2024, which provided new factual information supporting the grounds for this supplemental bid protest. This protest is filed with the Harbor Department within three days from the receipt of the Harbor Department's CPRA response. *See* Los Angeles County Purchasing Policy & Procedure Manual § 14.13.2 (Protest of Award Procedures).

#### PARTIES

The Protester is Subsea Global Solutions (SGS) US West Coast, LLC, headquartered at 1725 W. Pier D Street, Long Beach, CA 90802, Telephone: (562) 436-2701, Facsimile: (562) 436-2767. All communications relevant to this protest, however, should be directed to the undersigned.

The government entity is the Contracts and Purchasing Division, The City of Los Angeles Harbor Department, Attn.: Tricia Carey, Director, Contracts and Purchasing Division. Ms. Carey's email address is [TCAREY@portla.org](mailto:TCAREY@portla.org).

#### JURISDICTION—INTERESTED-PARTY STATUS

SGS is an interested party eligible to protest this procurement decision, as it is an actual offeror whose direct economic interest is affected by the Harbor Department's intended contract award to American Marine. The award decision was made contrary to the terms of the RFP. But for the errors in the evaluation, SGS would have had a substantial chance of award pursuant to the RFP.

## REQUEST FOR STAY OF CONTRACT PERFORMANCE AND TREATMENT OF PROPRIETARY INFORMATION

In accordance with the Los Angeles County Purchasing Policy & Procedure Manual, section 14.13.2 #5, SGS respectfully requests that the Purchasing Agent delay the contract award until this matter is resolved. SGS also requests that its proprietary information, as well as any information that could result in a competitive advantage for other firms, be properly safeguarded from public release. This includes abiding by established procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected/proprietary information.

### EVALUATION CRITERIA

The RFP provided the following evaluation criteria and the evaluative significance/weight for each criterion:

**SCORING GUIDELINES:**

Rater's Score: (Range 0-5) - 0=not included/non responsive; 1= Serious Deficiencies; 2=Marginal Abilities; 3=Adequate, 4=Well Qualified; 5=Exceptionally Qualified.

Scores must be **whole numbers only** (for example, "3.5" is not acceptable).

Weighing Factor: A range of 1 through 6, with 1 being of relative lower importance and 6 being relative highest importance. Each number (1 through 6) may be used more than once; however, in establishing weights, the total of all the weighing factors (A –E) must equal 20. Example: 3+2+6+4+5=20 or 3+3+3+6+5=20

Weighted Score= Rater's Score multiplied by (x) Weighing Factor. Totals should be calculated for each criterion.

Total score = Sum of all weighted scores.

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CRITERIA TO BE RATED		RATER'S SCORE	WEIGHING FACTOR	WEIGHTED SCORE
A. Firm Qualifications, Experience and References	How long has the company been in business? Has the company done similar work? Level of expertise in subject matter areas?		5	
B. Organization, Personnel and Staffing	Qualification and experience of proposed personnel for requested services? Locally based firm or team?		5	
C. Approach, Work Plan, Management, Safety Program, and Equipment	Quality of proposed work plan to meet project requirements? Quality of project management? Quality of Safety Program and Equipment?		4	
D. Rates, Fees and Budget Control	Competitive rates and fees proposed? Are proposed budget management, fees and staff hours proposed and clearly defined?		4	
E. Clarity and Comprehensiveness of the Proposal	Is the proposal clear, comprehensive, and understandable?		2	
	<b>Maximum points possible=100</b>		<b>A+B+C+D+E=20</b>	<b>Total Points=</b>

Exhibit A, Revised RFP (RAMP #215908), at 66.

**SUPPLEMENTAL GROUNDS FOR PROTEST**

As forecast, the Harbor Department conducted an objectively flawed evaluation of the proposals, running afoul of the RFP by overemphasizing incumbency, ignoring significant RFP safety requirements, and failing to consider objective technical and cost benefits associated with SGS’s proposal. As a result, the award decision to an inferior technical proposal, with increased safety risks, at a price premium, cannot be permitted to stand. The Agency Record for this procurement makes it even clearer that the award to American Marine must be reconsidered.

In reviewing an award decision such as this one, courts in California have held that the Agency must comply with the stated terms of the RFP. *See Eel River Disposal & Res. Recovery, Inc. v. County of Humboldt*, 221 Cal. App. 4th 209, 236, 164 Cal. Rptr. 3d 316, 336–37 (2013) (“[T]he letting of public contracts universally receives close judicial scrutiny’ because deviations from strict adherence to competitive bidding standards may facilitate corruption or extravagance, or affect the amount of bids or the response of potential bidders.” (internal citations omitted)). “The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements.” *Id.*

## I. American Marine Submitted a Nonresponsive Proposal and Should Have Been Excluded From Consideration

The Harbor Department should have excluded American Marine from consideration for award because its proposal failed to meet the essential requirements to “[p]rovide a copy of the company’s current safety policy, including a description of current safety programs and practices,” as well as “any accident reports from the prior four years.” Ex. A at 14. American Marine did not comply with either. Therefore, its proposal was nonresponsive and should not have been considered eligible for award.

The Harbor Department was not permitted to evaluate information that American Marine failed to include with their proposal. Rather, the RFP expressly provided “*additional written material outside of such proposal shall not be considered by the City in connection with this RFP*, unless the City provides a written request that they submit additional written materials.” *Id.* at 10 (emphasis added). The RFP made clear that only proposals meeting the requirements would be reviewed and evaluated:

*All proposals meeting the requirements of this RFP shall be reviewed and rated* by an evaluation committee according to the following criteria: 1) firm qualifications, experience, and references; 2) organization, personnel, and staffing; 3) project approach, work plan, management, safety program, and equipment; 4) rates, fees, and budget control; and 5) clarity and comprehensiveness of the proposal.

*Id.* (emphasis added). Thus, according to the RFP, only proposals meeting the requirements would be reviewed, and the Harbor Department could not look outside the four corners of AMC’s proposal to obtain information not provided in its submission.

American Marine’s proposal was nonresponsive because (1) it failed to include the required safety plan and (2) it failed to include all accident reports from the last four years, including an accident report related to *a fatality* at POLA. Therefore, the Harbor Department should not have considered American Marine’s proposal or, in the alternative, should have awarded it zero points for its safety program under Evaluation Factor C. This point reduction would have lowered American Marine’s score well below SGS’s.

### a. American Marine failed to provide a copy of the company’s current safety policy, including a description of current safety programs and practices

The RFP requires a vendor to “[p]rovide a copy of the company’s current safety policy, including a description of current safety programs and practices.” *Id.* at 14.

But American Marine failed to provide a copy of its safety policy and any description of its safety programs or practices. Instead, American Marine merely provided a *suggestion* of safety policies; it only included the objectives of its three safety documents and the corresponding tables of contents. *See Exhibit B*, Revised American Marine Proposal (Safety Section), at 1. Other than providing the tables of contents

for its purported safety policies, American Marine did not provide copies of those programs and policies or any description of what those policies entail.

For example, while American Marine noted that its Injury and Illness Prevention Program is designed to “prevent accidents and the hardships experienced by employees as the result of accidents,” there is no detail or description as to what the Injury and Illness Prevention Program is or how it would achieve that objective. *Id.* at 1. Similarly, its Safety Management System is purportedly “a comprehensive safety code of practice” that accounts for “company management and administration, vessel equipment and inspection, and human factors.” But nowhere does American Marine detail what is included in the Safety Management System, how it would be applied through its work with POLA, and how accounting for “human factors” makes for safer divers. *Id.* at 2. Though American Marine noted that hard copies of its safety materials would be made available upon request, American Marine’s proposal did not include them. And by failing to provide a copy, American Marine did not comply with the RFP. Moreover, the Harbor Department could not fairly evaluate something that was not actually provided in American Marine’s proposal. *See* Ex. A at 10 (“[P]roposers certify that such proposal constitutes their full and complete written response to the RFP and evidences their acknowledgement that **additional written material outside of such proposal shall not be considered by the City in connection with this RFP . . .**”) (emphasis added).

#### **b. American Marine failed to submit all accident reports from the past four years**

The RFP requires a vendor to “submit **any** accident reports”—not limited to a specific division—“from the prior four years.” *Id.* at 14 (emphasis added). The single incident American Marine included in its bid was a welder’s arm wound from March 15, 2023. Ex. B at 17–19. Notably missing was the widely publicized fatal injury sustained by an American Marine employee at the Port on March 18, 2024. *See* <https://ktla.com/news/local-news/worker-killed-in-port-of-los-angeles-forklift-accident/>.

OSHA is investigating this deadly accident, so far identifying one *willful* and two *serious* violations by American Marine—each underscoring critical lapses in safety protocol. During the pendency of the reevaluation, OSHA publicly released its significant findings associated with this incident. *See* **Exhibit C**, OSHA Inspection Detail (also available at <https://www.osha.gov/ords/imis/establishment.inspection.detail?id=1735443.015>).

For context, serious violations involve OSHA standards requiring employee safety training and communication systems (Standards 3203(A)(4) and 3203(A)(7)). A serious violation is issued when there is a substantial probability that an incident will result in death or serious physical harm. In American Marine’s case, **these findings indicate inadequate safety communication and employee training**. These are core elements of a safe working environment that are crucial in commercial diving operations, where precise, real-time communication and strict adherence to protocols are essential to avoid potentially fatal incidents. Further, **OSHA assessed American Marine a willful violation based on its hazardous-energy control (lockout/tagout procedures under Standard 3314(D)), which involves securing dangerous machinery during cleaning, repairing, or servicing**. A willful violation is the most severe category, suggesting intentional disregard or indifference to OSHA requirements. For an organization operating in

complex, high-risk environments, such a finding reflects a troubling institutional approach to safety—especially given the unique risks in underwater construction and diving work, where mechanical operations and machinery use are integral. This disregard for lockout/tagout procedures could be catastrophic during diving tasks, risking diver entrapment, injury, or worse.

American Marine failed to disclose the accident as part of its proposal, and there is no record that the Harbor Department considered it or its impact on American Marine's safety plan. American Marine's failure to provide this accident report or, in the alternative, the Harbor Department's failure to consider this fatal incident renders American Marine's proposal nonresponsive and any award to it indefensible.

**c. Alternatively, American Marine's score should have been reduced to reflect its failure to provide a compliant safety plan**

Even if it was permissible to evaluate American Marine's proposal, the Harbor Department should not have awarded American Marine any points under Evaluation Factor C for its safety program. Evaluation Factor C was worth five points and contained five subfactors: (1) Project Approach, (2) Work Plan, (3) Management, (4) Safety Program, and (5) Equipment. The Scoring Worksheet contained the following instructions to evaluators:

Rater's Score: (Range 0-5) – 0 = not included/nonresponsive; 1 = Serious Deficiencies; 2 = Marginal Abilities; 3 = Adequate; 4 = Well Qualified; 5 = Exceptionally Qualified.

Ex. A at 66. Thus, any category that was either not included or nonresponsive was entitled to zero points. As "Safety Program" was one of the five subcategories within Evaluation Factor C, American Marine should have scored a zero for that subcategory.

Two evaluators, David Orozco and Chuong Le, gave American Marine the highest score possible for this subfactor—a 5. *See Exhibit D*, Summary of Evaluator Scores, at 4, 6. Under any scenario, the highest score it was eligible to receive was a 4 (one point deducted out of five for its safety program being nonresponsive). As this score was weighted by a multiple of four, American Marine's score for each of the two evaluations should have been reduced by four points. That is, its total score should have been reduced by eight points, resulting in a very clear technical disadvantage to SGS. With this correction, American Marine's total score—at best—should have been  $265/3 = 88.33$ , which would have been substantially lower than SGS's technical score of 90.67.

**II. The Award Was Arbitrary, Capricious, and an Abuse of Discretion Because SGS Provided a Superior Proposal at a Lower Price Than American Marine Did**

The award to American Marine is arbitrary and capricious because the Harbor Department selected a technically inferior, higher-priced proposal and failed to document any rationale for its decision to pay a price premium.

American Marine's proposed rates—most importantly, its day rates—are 9.79% higher than SGS's proposed day rates. Specifically, for its three-man dive team, its per-day-per-shift rate is \$4,386, whereas SGS proposed \$3,995 for the same services. Compare **Exhibit E**, Revised American Marine Proposal (Cost Section), at 2, with **Exhibit F**, Revised SGS Proposal (Cost Section), at 46. Moreover, American Marine proposed a 6% annual increase to all of its rates for the entire period of performance, whereas SGS only proposed a 3.5% annual rate increase. Thus, the price differential will significantly increase in years 2 and 3 of American Marine's contract performance. There is no discussion, let alone mention, of this price differential in any document produced by the Harbor Department, and therefore no evidence that it considered the price premium of American Marine's proposal.

Nor is there any evidence that the evaluators weighed this price premium in light of the effectively equal scores between American Marine and SGS. Out of a 100-point score, the difference between American Marine's and SGS's total weighted scores was .33. See Ex. D at 1. Given that there was less than a 1% difference between American Marine's and SGS's technical evaluations, the price differential is even more significant. The Harbor Department's failure to even mention the price premium and effectively equal technical score, let alone conduct any tradeoff analysis to determine whether the price premium was worth it, renders the award arbitrary, capricious, and an abuse of discretion.

The arbitrary nature of the award, based on the Harbor Department's failure to conduct a tradeoff, is exacerbated in light of the other errors in the scoring of American Marine's proposal under Evaluation Factor C as discussed in Section I above. As American Marine's technical score was deeply flawed, the best-value determination was also deeply flawed and must be corrected. Under no circumstances did American Marine submit the proposal with the best value to the Harbor Department.

Under either scenario, there is no reasonable basis to pay *any* price premium for an inferior proposal, particularly where safety is a well-known, legitimate concern. While price is not the only factor, Los Angeles County Code of Ordinances section 2.81.960 requires that the priority be placed on awarding to low-priced bids: "Every award to other than low bid shall be made by a reviewing authority in the department superior to the assigned deputy purchasing agent." Indeed, courts in California have, in line with other jurisdictions, emphasized the importance of price in selecting a public-contract awardee:

Virtually all authorities on government procurement and public contract law define the competitive sealed bidding process employed by the County in this case as one in which "the award is made to the responsible bidder having the lowest responsive bid." (ABA Section of State and Local Government Law, *State and Local Procurement* (2012) p. 64.) Both the National Association of State Procurement Officials and the National Institute of Governmental Purchasing define "competitive sealed bidding" as "[t]he preferred method for acquiring goods, services, and construction for public use in which award is made to the lowest responsive and responsible bidder." (Nat. Assn. of State Procurement Officials, *State and Local Government Procurement: A Practical Guide* (2008) at p. 307; Nat. Inst. of Governmental Purchasing, *Public Procurement: Dictionary of Terms* (2010) p. 27.) According to one authority, "[t]he competitive bidding process in public contracting presumes that award will be made to the *qualified* individual or firm submitting the lowest

price quotations.” (Keyes, *Encyclopedic Dictionary of Contract and Procurement Law* (5th ed. 1992), p. 47, italics added.).

*Eel River*, 221 Cal. App. 4th at 233–34. Moreover, in the face of municipal regulations prioritizing award to low-priced bids, the awarding agency cannot disregard this preference, even by making price of lower importance in the RFP. *See id.* at 234. As a result, the protest should be sustained on this basis. The Harbor Department should conduct a new evaluation that accounts for the higher price offered by American Marine in light of the technical deficiencies in its proposal, with respect to its safety plan, to justify the tradeoff decision.

### **III. The Award Decision Is Flawed**

Here, as detailed above, the Harbor Department made a number of fundamental evaluation flaws that, individually and collectively, render this award indefensible and prejudiced against SGS. Most fatal is its failure to evaluate the contents of the proposals in accordance with the RFP and acceptance of a higher-priced, higher-risk proposal that objectively could not reasonably be determined as technically superior to SGS’s proposal. The Harbor Department must reconsider this award decision to American Marine, an inferior proposal at a higher price.

### **PREJUDICE**

SGS is clearly prejudiced by the errors in this procurement. Here, but for the procurement errors, SGS would have been awarded this contract.

### **REQUEST FOR DOCUMENTS**

SGS requests that the Harbor Department provide copies of all relevant documents that relate to the Harbor Department’s evaluation of proposals, American Marine’s safety plan and safety record, and any best-value tradeoff decision allowing the award to a higher-priced proposal and decision to award to American Marine instead of SGS. *See* L.A. Cnty. Code of Ordinances § 2.81.960.

### **CONCLUSION AND REQUEST FOR RELIEF**

For the reasons discussed above, SGS respectfully requests that the Harbor Department sustain this protest on all grounds and:

1. Cancel the intent to award to American Marine and deem its proposal nonresponsive.
2. Alternatively, reevaluate proposals, including a new best-value analysis in accordance with the terms of the RFP and applicable law.
3. Award SGS this contract and its costs associated with its filing and pursuing this protest, including attorneys’ fees.

4. Grant such other relief as the Harbor Department deems appropriate.

Sincerely,

/s/ Kevin P. Simpson

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