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FILED VIA EMAIL

Purchasing and Contracts Analyst
The Port of Los Angeles
Contracts & Purchasing
500 Pier A Street
Wilmington, California 90744
Attn: Tricia Carey TCarey@portla.org
Cc: Susana Eldridge SEldridge@portla.org
Myra Demus-Young MYoung-Demus@portla.org

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 post-award protest filed by SGS on November 15, 2024, of the City of Los Angeles Harbor Department’s (“**Harbor Department**”) decision not to award a contract to SGS under Request for Proposal (the “**RFP**” or “**Solicitation**”), Regional Alliance Marketplace for Procurement (“**RAMP**”) ID # 215908. 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 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 cancelled the RFP on July 17, 2024, and issued the current RFP # 215908. After months of a purported reevaluation, the Harbor Department’s November 13, 2024¹, four (4) sentence Non-Selected

¹ The Harbor Department e-mailed a copy of the letter to SGS on November 13, 2024. The letter itself, however, is dated November 12, 2024.

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Vendor Letter fails to address *any* of the concerns raised in the initial protest or provide SGS with any reason/s why its bid was unsuccessful. SGS's initial document requests were eminently reasonable as they sought transparency in the Harbor Department's procurement process. Thus far, SGS has not received any documents or explanations related to the Harbor Department's non-selection of SGS and likely award to American Marine. The Harbor Department's reluctance to provide relevant procurement documents negatively impacts SGS's ability to prosecute its bid protest challenging its elimination and the award decision to American Marine.

INTRODUCTION AND SUMMARY OF PROTEST

The apparent selection of American Marine is improperly based on its nearly-uninterrupted decades-long run as the incumbent contractor for the City of Los Angeles Harbor Department; rather than it offering either the most technically advanced or lowest price offer. 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. Additionally, the Harbor Department should provide some level of transparency as to ensure its award decision is consistent with the terms of the RFP. As detailed further herein, this award should not be permitted to stand for the following reasons:

First, SGS objectively should have received a higher score than American Marine. This was argued in the previous protest and nothing substantively about American Marine's technical capabilities has changed. Indeed, under Evaluation Criterion A (Firm Qualifications, Experience and References), SGS has performed these sorts of diving services for a longer duration of time, and over more varied contracts, than has American Marine. It is again clear that there has been an undue emphasis on American Marine's incumbency instead of the full breadth of technical capabilities. This undue evaluative emphasis on work performed *at this specific location*, as the incumbent contractor, runs afoul of the RFP, and thus, renders this award decision unsupportable.

Second, under Evaluation Criterion B (Organization, Personnel and Staffing), SGS previously argued that it has an objectively far superior proposal as compared to American Marine to include a well-established dive team. As argued, American Marine has lost 3 of its 6-person dive team and that still appears to be the case. To be clear, because of the relatively small diving community in the LA area, personnel retirements do not go unnoticed. In fact, it is well-known that American Marine has lost a number of its experienced divers, yet, this was not properly considered in the evaluation. Accordingly, any positive assessments attributed to American Marine's experienced dive team must again be re-considered. On the other hand, SGS's larger and more experienced dive team remains fully in-tact, and thus, should have been assigned additional evaluative credit. Insofar as these two proposals were similarly rated under Criterion B, that determination simply cannot withstand the most top-level scrutiny. SGS proposed a deeper bench of experienced divers, and thus, should have received a superior rating.

Third, under Evaluation Criterion C (Approach, Work Plan, Management, Safety Program, and Equipment), SGS also proposed a superior proposal. Specifically, American Marine's rating should have been lowered for its lack of quality of safety program and equipment. For starters, American Marine is widely known to use heavier, antiquated diving gear, not at all keeping in line with modern day diving

gear technology and industry standards. In fact, American Marine performs its current dives with diving gear from the 1960s. Obviously, this heavier diving gear poses significant risks to its divers and possibly for first responders, if such a need arises. American Marine's proposal should have been adversely assessed because of this increased safety risk. SGS proposed a thorough safety program that includes modern, state of the art diving gear. SGS's safety program and equipment should have been yet another discriminator between the two proposals.

Additionally, the widely-publicized unfortunate death of one of American Marine's employees at the Port of Los Angeles underscores and highlights legitimate concerns associated with American Marine's safety program generally. As a result of this unfortunate accident, and during the pendency of the re-evaluation, an Occupational Safety and Health Administration ("OSHA") investigation of this incident identified two serious violations and one willful violation, each underscoring critical lapses in safety protocol. Indeed, because of such serious findings, the Harbor Department should have found American Marine to be ineligible for award. It is highly unlikely that American Marine provided this accident as part of its proposal, and almost certain that the Harbor Department failed to consider this publicly available information before rendering its award determination. The RFP, however, requires a vendor to provide "any accident reports from the prior four years." American Marine's failure to provide this accident report, or in the alternative, the Harbor Department's failure to consider this fatal incident, renders the award decision indefensible.

Fourth, under Evaluation Criterion D (Rates, Fees and Budget Control), SGS proposed a lower price than did American Marine. Upon information and belief, SGS understands that in addition to the aforementioned technical benefits, American Marine proposed a higher price than SGS. This allegation can be easily addressed by a proper review of the daily rates for a three-person dive team. If such a review is conducted, it will be clear that American Marine's rates are higher than SGS's.

SGS was prejudiced because of an 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 tax-payer and safety to the persons involved in contract performance.

Any reasonable comparative review of the two proposals, evaluated in accordance with the RFP, will reveal that the underlying re-evaluations were flawed, and thus, the resultant award decision was also flawed. At bottom, the contract award to an ***inferior proposal at a price premium, to a vendor with serious and willful OSHA findings*** cannot be justified.

For these reasons, expounded below, this protest must be sustained and a new award decision should be made to SGS.

TIMELINESS

On November 13, 2024, the Harbor Department advised SGS that it was not selected for award. See **Exhibit A**. This protest is filed with the Harbor Department within three days from the date of the

Non-Selected Vendor Letter, and thus, is timely. *See* Los Angeles County Purchasing Policy & Procedure Manual Section 14.13.2 Protest of Award Procedures

PARTIES

The Protester is Subsea Global Solutions, 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 e-mail address is 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

Pursuant to 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.

FACTUAL BACKGROUND

A. Summary of Procurement

On March 12, 2024, the Harbor Department issued the initial RFP, requesting proposals to provide on-call underwater hard hat diving and related services for wharf pile inspections, pile wrapping, vessel hull cleaning, wharf repair, and other miscellaneous services. **Exhibit B**, Initial RFP (RAMP # 213372) at 2. The proposed contract was for three years. On May 9, 2024, SGS was notified that it was not awarded the contract and protested the decision immediately, with a supplemental protest filed on May 20, 2024. **Exhibit C**, Initial Protest. On July 17, 2024, the Harbor Department cancelled the initial RFP

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without any explanation. **Exhibit D**, Cancellation Letter. On July 19, 2024, the Harbor Department released a slightly revised RFP. **Exhibit E**, Revised RFP (RAMP # 215908). Vendors were required to submit proposals in response to the revised RFP by August 5, 2024. *Id.* at 11. SGS submitted a comprehensive, timely proposal in response to the revised RFP. **Exhibit F**, SGS's Revised Proposal. The revised RFP provided the following summary:

1.1 Brief Overview of the Project

The Construction and Maintenance Division is soliciting proposals from qualified contractors to provide on-call underwater hard hat diving and related services for wharf pile inspections, pile wrapping, vessel hull cleaning, wharf repair and other miscellaneous services as described in this RFP. The Port of Los Angeles maintains approximately 23,000 wooden piles of which approximately 20,000 are bearing piles and 3,000 are fender piles.

The duration of the contract(s) awarded as a result of this RFP is expected to be three-years from the date of execution of the contract(s). The Harbor Department may award more than one contract to qualified and responsive proposers as a result of this RFP process and based on Harbor Department project needs. Award of the contract(s) will be subject to Board approval. The Harbor Department reserves the right to award to one or a limited number of contractors, or to make no award.

Ex. E at 6.

B. RFP Requirements and Evaluation Criteria

With respect to the proposal, the RFP stated:

By submitting a proposal, proposers 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, unless the City provides a written request that they submit additional written materials. Absent such written request, proposers are instructed to not submit to the City written or other materials outside of the proposal, either in a subsequent interview or otherwise.

3.3 Evaluation Process and Selection Criteria

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. See Exhibit F.

As part of the evaluation, selected proposers may be asked to perform a sample pile wrap and film their work, at the sole expense of the proposer. The evaluation committee will make the final recommendation for selecting the contractor(s). All recommendations are subject to the approval of the Director of Construction and Maintenance, the Executive Director, and the Board of Harbor Commissioners.

Id. at 11.

In relevant part, the RFP stated that proposals were to contain the following information:

3.4 Proposal Content

The following items shall be included in your proposal:

1. Cover Transmittal Letter

Provide a narrative which introduces the firm and team highlighting the special strengths of the firm to perform the work requested in this RFP. The letter should be signed by an authorized principal of the proposing consulting firm.

2. Firm Qualifications, Experience and References

Provide a narrative describing the firm's qualifications to perform the project work, including past (relevant) experience and at least three client references, with contact names and information. Include information regarding your firm's experience involving the size and level of complexity of the proposed project. Qualifications and experience for proposed subconsultants should also be included.

...

Provide proof that your firm and staff meet the following requirements:

- A. Company must have a State of California Class "A" contractor's license, issued in the name of the company.
- B. Four (4) years demonstrated company experience performing the following work:
 - 1. Underwater timber wharf repairs including the installation and replacement of timber jacketing materials (such as plastic wrap) on piles, braces, and structural supports;

2. Heavy underwater timber pile maintenance including stub piles, barrel pours, and reinstallation of braces, beam and structural timbers;
 3. Underwater inspection and evaluation of the condition of timber fender and bearing piles, metal piles, wharf slope ratproofing, and electrolysis protection systems;
 4. Underwater concrete wharf inspections and repairs; and
 5. Underwater steel structural inspections and repairs.
- C. Each diver assigned to primary and as-needed hard hat dive teams must have at least 400 dive days, of recent paid experience accumulated within the last four (4) years, in underwater work described above in Item 2, including a minimum of:
1. Forty working days of underwater timber wharf repair work including the installation and replacement of timber jacketing materials (such as plastic wrap) on piles, braces, and structural supports;
 2. Twenty working days of heavy underwater timber pile maintenance work including stub piles, barrel pours, and reinstallation of braces, beam and structural timbers;
 3. Ten working days of underwater concrete wharf inspection or repair work; and
 4. Three working days of underwater steel structural inspection or repair work.

Id. at 12-13.

3. Organization, Personnel and Staffing

Provide a brief description of all key personnel and technical staff (including vendors, partners or subconsultants) to be involved and their relationship to the services to be provided.

Id. at 13.

4. Project Approach and Work Plan

Provide a narrative which shows your firm's understanding of the project's requirements and documents a logical technical approach to the project scope of work. Include a general work plan as well as the proposed approach to undertaking the scope of work described earlier in this RFP.

- If specific project team members or vendors are critical to specific tasks, identify where they will be utilized and/or committed.
- Identify appropriate assumptions and considerations that could impact the scope and timeline for completing each task.
- Provide a detailed equipment list for each application area with associated costs.
- Provide a detailed list of estimated expenses by category. Identify related considerations and assumptions for these expenses.

5. Management and Invoicing

Describe how your firm intends to manage all aspects of the work to be performed, including schedules for completion of tasks/subtasks, procedures for scheduling and cost control. The Project management proposal must include:

- Regularly scheduled project team meetings.
- Daily written progress reports.
- Issue/risk management techniques.
- Invoicing system to support work conducted and all associated equipment.

6. Cost

Provide all pricing and cost information for all proposed services referenced in Section 2.2 – Project Scope of Work as follows, including all relevant unit costs, time increments (per hr./day), and/or flat rates for all proposed team members:

Id. at 14.

7. Safety Program

Provide a copy of the company's current safety policy, including a description of current safety programs and practices. Please submit any accident reports from the prior four years.

8. Photographs of Equipment

Provide labeled color photographs (minimum size 4" x 6") showing the primary and as-needed dive team's dive boat, working punt or float, dive suit with hard hat helmet, and listed equipment.

Id. at 15.

The RFP provided the following evaluation criteria and the evaluative significance/weight for each of the 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.

...

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	
	Maximum points possible=100		A+B+C+D+E=20	Total Points=

Id. at 56.

C. Notice of Unsuccessful Offeror

As mentioned, on November 13, 2024, the Harbor Department advised SGS that it was not selected for award. *See* Ex. A. This protest follows that notification since the Harbor Department apparently made the same award decision without any explanation about the basis for award or the serious concerns raised in SGS's initial protest.

GROUND FOR PROTEST

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As forecasted, the Harbor Department conducted an objectively flawed evaluation of the proposals, running afoul of the RFP by over-emphasizing 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. Months after the initial decision, it is now even more clear 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. Cnty. of Humboldt*, 221 Cal. App. 4th 209, 236, 164 Cal. Rptr. 3d 316, 336–37 (2013) (“the 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. SGS Proposed a Superior Proposal Under Evaluation Criterion A

SGS objectively should have received a higher score than American Marine, or, at an absolute minimum, the same score under Evaluation Criterion A (Firm Qualifications, Experience and References). Evaluation Criterion A would consider: “How long has the company been in business? Has the company done similar work? Level of expertise in subject matter areas?” Ex. E at 56. SGS has performed these sorts of diving services for a longer duration of time, and over more varied contracts that require more complex skill sets than has American Marine. Indeed, SGS's proposal provides the following detailed information relevant to Criterion A:

PAST PROJECTS

- **Port of Long Beach (POLB) On-Call Diving Services Contract (1998 – Ongoing, 25 years of experience):** SGS was awarded the diving service contract for the POLB in 1998 and is still contracted for these services through 2027. The POLB on-call contract, much like that of the POLA, requires commercial underwater diving services to support the maintenance, repair, rehabilitation, and reconstruction of the Port's facilities and infrastructure. The dive teams complete directed tasks including: general maintenance, cleaning, and inspections of docks and Port vessels; inspection and repair of electrolysis protection systems; repair of concrete piles using Sika repair techniques and certified diving technicians; repair of timber cross bracing and hardware replacement; installation and repair of PVC and HDPE pile wraps on timber piles, perform condition surveys including inspection and evaluation of timber and concrete wharfs and piers, and steel sheet pile walls; inspection of wharf ratproofing and slope for indications of undermining; bottom debris surveys and identification surveys; undermining and sink hole repairs; and dredging and exploratory exploration.
- **Port of Los Angeles (POLA) On-Call Underwater Hard Hat Diving Services: (2011 – 2014, 3 years of experience):** From November 2011 to July of 2014, SGS was the contracted underwater hard hat diving service provider for the POLA. During this period, SGS dive teams performed work in all of the required categories as specified per the RFP.
- **Port of Los Angeles (POLA) Marine Improvements 2008 – 2010, 2012 – 2014, & 2016 – 2020 (8 years of experience):** SGS has been a consistent diving service provider on the POLA Marine Improvement contracts. During this time SGS has successfully executed several POLA inspection, repair, and rehabilitation projects including: the inspections, evaluation, and repair of fender and bearing piles, metal piles, and wharf slope ratproofing at Berths 73X, Y, and Z, 121-128, 131, & 126; installation of plastic pile wraps on fender piles at Berth 93; barrel pours at Berth 163; inspection of concrete piles at Berth 102; inspection and repair of timber piles at Berth 195; underwater saw-cutting and removal Berth 239 mooring point 1(dolphin removal), inspection of sheet pile wall welding repair at Berth 85; and the inspection and repair of 75 concrete piles by means of fiberglass jackets at Berth 84.

In addition to the service contracts detailed above, SGS has also successfully executed several additional projects through-out the POLA, POLB, and surrounding areas, that has further enhanced our dive team's applicable skills to this contract and has increased the company's expertise in the required categories of work. A selection of the more recent projects completed are listed below:

- **United States Navy Weapons Station Seal Beach Channel, Turning-Basin, Navigational Aids Removal, Pile Inspections & Structural, Service Life and Non-Structural Pile Repair Efforts (2020 – present):** SGS provides underwater hard hat diving support for the Manson-Conolly Pacific Joint Venture (MCSB JB) NAVFAC Southwest project. The scope includes cutting and removal of 5 sets of timber pile dolphins, removal of mooring buoy buried clump weights and chain, as well as rigging/loading to barge all removed material.

Due to challenging driving conditions during the pile installation process, many prestressed, precast concrete piles were damaged. SGS was engaged to clean and inspect over 1,100 new precast, prestressed piles installed at the Seal Beach Naval Weapons Station, leading to the identification of various structural defects and the need for repairs. SGS is executing structural, non-structural and service life repairs on over 50 damaged precast prestressed concrete piles at the Seal Beach Naval Weapons Station, including the installation of fivestar jackets and cementitious power repair product for structural repairs and the use of splash zone epoxy for non-structural service life repairs. All work is being performed to the complete satisfaction of the Navy and MCSB JV. This work is ongoing.

- **LADWP Haynes Generating Station – Emergency Bridge Revetment Installation (2023):** During a routine bridge inspection, severe damage to multiple girders of a petroleum product pipe bridge crossing over Alamitos Bay was discovered, posing an imminent risk of failure and severe environmental impact. Under the on-call Power contract with LADWP, SGS was tasked to perform emergency bridge revetment improvements, installing over 1,600,000 pounds of revetment repair material to stabilize the bridge until it can be safely removed. This work was approved by the California Coastal Commission and completed to the full satisfaction of LADWP at the Haynes Generating Station. Efforts to remove the bridge are ongoing, with a second stage to remove the revetment repair materials planned in Q3 of 2024.
- **San Onofre Nuclear Generating Station Large Organism Exclusion Devices Marine Mammal Barrier Repair (2023):** SGS successfully repaired Large Organism Exclusion Devices (LOED) at the San Onofre Nuclear Generating Station (SONGS) using a design concept that involved placing prefabricated steel plates and steel cables on Unit 2 & Unit 3 POIS. The project included using mild steel components with a design life of three years, strategically placed to avoid existing structures and minimize cleaning efforts. SGS fabricated components in Long Beach, CA, and the installation was completed by removing existing netting, cleaning surfaces, securing base plates, and installing wire rope assemblies in a parallel configuration. The project achieved its goals of providing a safer, more cost-effective approach that met regulatory requirements. The SONGS engineering team was extremely satisfied with our out-of-the-box thinking, focus on safety, and overall project performance.

- **Port of Long Beach Pier H – Carnival Cruise Terminal Pile Repairs (2024):** SGS was contracted to perform epoxy repairs to the steel substructure of a new breasting dolphin at the Carnival Cruise terminal. Using splash zone epoxy, SGS coated the original area in accordance with the contract documents. During the fieldwork, additional lengths of pile needing repair were identified. SGS proposed using Denso SeaShield 2000HD to the client and is currently in the process of completing these additional repairs.
- **Port of San Luis Harbor District – Avila Beach Pier Timber Pile Repair (2022):** SGS was contracted to perform structural jacket repairs on the Avila Beach Pier in Avila Beach, CA. This involved installing Denso FX-70 structural jackets on several dozen damaged and deteriorated timber piles. The need for these repairs arose from challenging environmental conditions that prevented the driving of replacement piles. Despite the ongoing challenges of working offshore and within the surf zone, SGS successfully completed the work to the client's satisfaction. SGS collaborated closely with PSLHD staff to promptly address onsite changes, ensuring the client's complete satisfaction. Following a large winter storm in January 2023, the repairs implemented by SGS remained intact.
- **Marathon Pier B, Berths 84-87 Concrete Pile Repair Efforts, Long Beach, CA (2022 - 2023):** SGS provided underwater diving services to support the structural preservation systems' pile repair effort for Marathon Oil Company. The project involved implementing structural pile repairs at the Marathon Marine Oil Terminal, spanning PE Berths 84 through 87 and the portal in Long Beach. SGS undertook the tasks of cleaning the piles, removing loose concrete debris to expose a solid concrete substrate, and wrapping the repair areas with fiberglass impregnated epoxy. All work was completed to the client's satisfaction, within the designated timeframe, and according to the allocated budget.
- **T-Pier, City of Morro Bay, CA (2024):** SGS successfully supported Richard Brady & Associates with an underwater condition inspection of the T-Pier in Morro Bay, CA. The scope included inspecting 249 timber plumb and batter piles and 169 fender piles using a 3-man, 3-wet diver team and diving support vehicle. SGS provided Level I/II inspection tools, an underwater HD video system, and all necessary diving life safety equipment. The work was performed to the complete satisfaction of the client.
- **United States Coast Guard (USCG) Repair of Industrial Wharf at Base Los Angeles / Long Beach (2016 – 2017):** SGS performed underwater diving services with the following scope of work: removal of 50+ PVC plastic pile wraps from timber piles, condition inspection and survey of 50+ timber piles, the installation of 20+ Denso SeaShield Series 90 pile wrap system, installation of 20 long post pile repairs, installation of 15 epoxy filled fiberglass jackets, removal and reinstallation of cross bracing and associated hardware, and patch repair of fender pile PVC pile wrap.

- **Port of Los Angeles (POLA) Berths 214-220 Redevelopment (2016 – 2017):** SGS performed underwater diving services to assist the prime contractor with the installation of approximately 1,500 LF of new-sheet pile wall for the YTI facility. Scope of work included: pre-dive inspection survey, removal of 1,500 LF of lashing bars and debris, dive support to guide and install sheet pile wall in template, and final post-drive inspection of sheet pile wall.
- **Tuna Club of Santa Catalina Island: Repair Tuna Club Timber Pier (2017-2019):** SGS performed a condition survey of the timber piles and structural members of the timber pier for the historical Tuna Club in Santa Catalina Island. Based on the condition survey, SGS utilized its in-house engineering to determine and execute repairs. Phase 1 repairs included chipping and removal of old barrel pours, installation of (9) long post pile repairs, stub pours, and protective plastic pile wrap. Phase 2 included same work scope repairs on 9 pier piles in 2018, and phase 3 included inspection of over 100 piles and same work scope repair to 5 piles in 2019.
- **Port of Long Beach (POLB) Wharf & Backlands Redevelopment Piers D, E, & F: Phase 1, Stage; Phase 1, Stage 2; Slip 1 Fill & Berth D28 (April 2011 – December 2014):** SGS was the diving subcontractor for the (3) contracts at to assist in the wharf and backlands redevelopment at Piers D, E, and F. During these contracts, SGS performed the following scope of work: pre-pile driving inspection and debris removal, post-drive inspection of over 1500+ concrete piles, installation of Denso pile wrap system on (47) piles, splash zone epoxy crack and spall repair of 28 piles, installation of epoxy filled FRP jacket, underwater concrete pile cutting and removal, assisting in the removal of 23 sheet pile cells including condition inspections of the sheet cells, daily guidance of the vibratory hammer for extraction, and performing underwater burning as required for removal.

SGS has years of significant experience in “Category 6: Underwater Hull Cleaning.” SGS currently holds many service contracts with major shipping, cruise line, and maritime companies. We provide tailored maintenance programs to each of our clients which include routine hull cleanings. Additional details of our Ship Maintenance program can be found in Appendix E. To perform in-water hull cleanings SGS utilizes specialized brush cleaning units, designed to clean the most sensitive coating without adversely affecting their integrity. We are also well equipped and experienced in cleaning a wide range of vessels including the Fire Boats for the POLB, derrick and flat barges for marine contractors, and large container ships and cruise liners. This diverse cleaning clientele has allowed SGS to optimize and streamline our cleaning techniques to provide the best value to our client.

SGS also brings expertise in executing more complex jobs, including specialty underwater demolition utilizing innovative and state of the art wire saw technology. SGS has been performing these intricate jobs in Southern California since the removal of the Henry Ford (Badger Avenue) Bridge in the late 1990s, and most recently has worked on the ongoing decommissioning of Unit 1 MAPS and VCTS at San Onofre Nuclear Generating Station (SONGS) and the partial demolition of the NRG Intake Forebay Structure in the Port of Long Beach in 2015.

Ex. F at 7-11.

Instead of considering the offerors’ full breadth of experience, to include SGS’s wide-array of relevant experiences, references (e.g., its identical work at the Port of Long Beach), and its execution of

even more complex work, the Harbor Department either failed to properly evaluate the proposals, or, applied improper evaluative weight to American Marine's incumbent contract. However, the RFP did not prioritize incumbency over more extensive, similar experience. To be sure, any side-by-side analysis of the two proposal responses to Evaluation Criterion A, the most heavily weighted evaluation factor, should have unequivocally revealed that SGS is the more experienced and therefore superior offeror. As such, for this reason alone, SGS reasonably should have been awarded this contract.

II. SGS Proposed a Superior Proposal Under Evaluation Criterion B

Under Evaluation Criterion B (Organization, Personnel and Staffing), SGS objectively has a far superior proposal to include a well-established dive team. Evaluation Criterion B considered: "Qualification and experience of proposed personnel for requested services? Locally based firm or team?" Ex. E at 56. It is widely known within the local industry that American Marine has recently lost half of its incumbent dive team, likely including those employees referenced in American Marine's proposal. Specifically, American Marine has lost 3 of its 6-person dive team. Accordingly, any positive assessments attributed to American Marine's experienced, incumbent dive team were made in error, and thus, must be re-considered. Based on the dearth of information received, it is unclear if the Harbor Department assessed benefits/strengths to American Marine's approach because of its incumbency and its *assumed* dive teams. For example, in the Federal context, the Government Accountability Office ("GAO") has reasoned that agencies may not "assume or infer that an offeror will perform a contract using a specific technical approach that is not included in the offeror's proposal and cite that approach or benefit as a discriminator in favor of award." *Native Energy & Tech., Inc., B-416783 et al.*, Dec. 13, 2018, 2019 CPD ¶ 89 at 5. Further, to the extent that American Marine falsely inflated its proposal by naming divers that were no longer employed by the company, the Harbor Department should have discredited the proposal based on the provision of false information.

Whereas American Marine has lost half of its dive team, SGS's experienced dive team remains fully intact, and as a result, should have been assigned additional evaluative credit. If these two proposals were similarly rated under Criterion B, that determination simply cannot withstand an objective review. Indeed, SGS proposed a deeper bench of experienced divers and should have received a superior rating. SGS proposed the following lead divers and team:

LEAD DIVERS - DIVE DAYS PER CATEGORY (LAST 4 YEARS)

Jimmy Nguyen - Primary Lead Diver 1

Description	Days
Dive Days (Physical Diving)	900+
Category 1 - Timber Wharf Repairs	163+
Category 2 - Timber Pile Maintenance	147+
Category 4 - Concrete Wharf Inspection & Repair	352+
Category 5 - Steel Structural Inspection & Repair	137+

Terry Marshall - Primary Lead Diver 2

Description	Days
Dive Days (Physical Diving)	800+
Category 1 - Timber Wharf Repairs	153+
Category 2 - Timber Pile Maintenance	121+
Category 4 - Concrete Wharf Inspection & Repair	315+
Category 5 - Steel Structural Inspection & Repair	116+

Jose Perez - As-Needed Lead Diver

Description	Days
Dive Days (Physical Diving)	800+
Category 1 - Timber Wharf Repairs	126+
Category 2 - Timber Pile Maintenance	183+
Category 4 - Concrete Wharf Inspection & Repair	135+
Category 5 - Steel Structural Inspection & Repair	107+

In addition, each of the lead divers and additional dive team personnel have performed hundreds of hours of hull cleaning on vessels. Each has extensive knowledge and experience utilizing the appropriate equipment and techniques to perform underwater hull cleaning. Therefore, SGS can use the primary and the as-needed dive teams to perform the hull-cleaning services in-house, without the reliance on a subcontractor.

For this contract, we have designated two of our most experienced Dive Supervisors as the primary Lead Divers for daily activities, with a third highly experienced Dive Supervisor available as needed. These supervisors possess in-water expertise in performing all required tasks of the on-call contract. They will oversee worksite operations to ensure safety in accordance with OSHA Commercial Diving Operations and SGS safety standards (Section 7 and Appendix D). Additionally, the Lead Divers will be responsible for executing the in-water work to specification and quality standards, while maintaining daily records for their dive teams. To streamline this process, each Lead Diver will have an onsite laptop for efficient composition and submission of electronic daily logs and reports, accompanied by photographic and/or video evidence. Lead Divers will report directly to the Project Manager, The Project Manager will be supported by the operations team for scheduling, technical reporting, and other administrative tasks. The remaining personnel of the primary and as-needed dive teams, including tenders, divers, and standby divers, have been carefully selected from our pool of 34 certified commercial divers, ensuring they are among the most skilled and talented in the industry. All SGS divers undergo a thorough vetting process and must maintain the necessary certifications and qualifications, including an annual "Fit to Dive" physical, completion of a diving certification/training program compliant with OSHA Diving Standards 29 CFR 1910.410, first aid, CPR, and AED certification, Oxygen Administration certification, applicable diver permits (e.g., POLA, POLB), and up-to-date diving logs.

It is important to note that SGS personnel will handle all aspects of the contract, eliminating the need for subcontractors or vendors. Key personnel assigned to the On-Call Underwater Hard Hat Diving Services contract are detailed in the following pages.

Ex. F at 12-13.

SGS's proposal continues to provide another 5 pages of clear, relevant detail associated with its staffing and organizational chart. *See id.* at 14-19. Again, if a side-by-side analysis is conducted, there is simply no way one can justify an award to American Marine. Based on the limited information provided, it appears that the Harbor Department was guided by American Marine's incumbency, rather than the actual dive teams proposed to meet the instant requirements; a fatal evaluative flaw. SGS's bid protest should be sustained for this reason alone.

III. SGS Proposed a Superior Proposal Under Evaluation Criterion C

Under Evaluation Criterion C (Approach, Work Plan, Management, Safety Program, and Equipment), SGS also proposed a superior proposal. To reiterate, Evaluation C considered: "Quality of proposed work plan to meet project requirements? Quality of project management? Quality of Safety Program and Equipment?" Ex. E at 56. Under this criterion, it is clear that American Marine should have been adversely impacted for its lack of quality of safety program and equipment. It is well known within the industry that American Marine uses heavier, antiquated diving gear, not at all keeping in line with modern day diving gear technology and industry standards. In fact, American Marine performs its current dives with diving gear from the 1960s. This heavier, antiquated diving gear poses significant risks to its divers and possibly for first responders, if such a need arises. There is no indication that America Marine has purchased newer diving equipment. As such, American Marine's proposal should have been adversely assessed because of this increased risk to safety.

By contrast, SGS proposed a thorough safety program that includes established tried and tested safety procedures, and modern, state of the art diving gear. For example, SGS proposed the following Safety Program:

SECTION 7: SAFETY PROGRAM

“Safety: Every Day & Everyone” is our first core value and the governing philosophy at Subsea Global Solutions, LLC (SGS). This means that every employee from the CEO to the newest hire has a personal responsibility to safeguard the wellbeing of our teammates, and the public.

SGS management and frontline employees work collaboratively to identify and control situations that could cause harm and to integrate health and safety practices into their daily activities.

Subsea Global Solutions:

- Is committed to providing safe workplaces for all its employees.
- Recognizes that each employee has a right to a work environment which will not adversely affect his or her health and safety.
- Recognizes each employee’s ability to invoke their Occupational Safety and Health Act rights at any time for any reason and use their Stop-Work Authority to correct any observed unsafe condition or behavior.
- Will diligently carry out the employer duties contained in the Occupational Safety and Health Act and regulations.
- Will minimize the risk of occupational injury, illness, and property damage through:
 - Maintaining a comprehensive health and safety program.
 - Ensuring supervisors identify and control workplace hazards and communicate information about those hazards throughout the workplace.
 - Training, supporting, and working cooperatively with health and safety representatives.
 - Being committed to work in a spirit of consultation and cooperation with the workers.



SGS HEALTH AND SAFETY PROGRAMS AND PRACTICES

SGS staff seek to integrate safety in everything we do, but the following programs and practices offer an overview of some of the tools we use to keep our teams safe and engaged in SGS safety culture.

Risk Management Program

SGS uses Hazard Identification and Risk Assessment practices to evaluate the work we do and train our people how to work safely in the varied and challenging environments in which we operate. Risk management begins during pre-job planning and extends through execution with Job Safety Analysis (JSA) and onsite safety meeting/toolbox talks at the beginning of every shift of every project. This meeting is used to review potential safety hazards, how they will be mitigated, and how the team will respond to a predictable emergency situations. All members of the team sign off the JSA form before beginning work.

Lifesaving Rules Program

SGS has adopted the International Association of Oil and Gas Producers (IOGP) Lifesaving Rules to teach our personnel how to recognize and mitigate common hazards by following 9 rules for bypassing safety controls, confined space work, driving, energy isolation, hot work, avoiding the line of fire, mechanical lifting, work authorization, and working at height. See Appendix D for details of each rule.

Emergency Readiness Exercise (REx) Program

The REx Program is an emergency readiness training initiative based on how military forces and emergency management organizations prepare for challenging field operations in hazardous environments. Six core readiness exercises teach our teams how to respond effectively to each phase of a diving-related emergency. The exercises are: 1) Recovery Planning, 2) Ascent to Surface, 3) Diver Recovery, 4) Rapid Neuro, 5) Trauma Kits, and 6) Emergency Communications. All dive staff are required to have participated in all 6 Readiness Exercises within the past 6 months (on a rolling basis) to maintain currency.

Exercise participation dates are listed in our Crewing Dashboard to help Operations and Project Managers ensure the teams they are putting on jobs are trained and ready to respond effectively if an emergency situation occurs.



Ex. F at 50-51. As for equipment, SGS provided detailed pictures and explanations of its proposed, modern equipment. *See id.* at 58-96. SGS's equipment is objectively far superior to American Marine's.

SGS's safety program and equipment should have been yet another discriminator between the two proposals. Additionally, the widely-publicized, unfortunate death of one of American Marine's employees at the Port of Los Angeles underscores and highlights legitimate concerns associated with American Marine's safety program. *See* <https://ktla.com/news/local-news/worker-killed-in-port-of-los-angeles-forklift-accident/>. During the pendency of the re-evaluation, OSHA publicly released its significant findings associated with this incident. **Exhibit G**, OSHA Inspection Detail; https://www.osha.gov/ords/imis/establishment.inspection_detail?id=1735443.015

With respect to this incident, OSHA has identified two serious violations and one willful violation, each underscoring critical lapses in safety protocol. 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 could result in death or serious physical harm. In American Marine's case, **these findings indicate inadequate safety communication and employee training** - 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, delta-p, injury, or worse.

Under even a top-level analysis, these significant violations indicate a *systemic deficiency* in American Marine's safety culture, particularly concerning areas vital to diving operations. Given the high level of risk associated with underwater construction, these safety failings, that resulted in a fatality, should have disqualified American Marine from award consideration. Because of the severity of this accident, it is unlikely that American Marine provided any information associated with this incident as part of its proposal. Moreover, it is almost certain that the Harbor Department failed to consider this publicly available information before rendering its award determination. The RFP, however, requires a vendor to provide "any accident reports from the prior four years." Ex. E at 15. To the extent American Marine failed to disclose this accident report, or in the alternative, the Harbor Department's failure to consider this fatal incident, renders the award decision indefensible.

A side-by-side analysis of the two proposals will objectively confirm that SGS's proposal is superior. In sum, SGS's proposal provides far greater safety assurances than does American Marine's. This award decision simply cannot stand.

IV. SGS Provided a Superior Proposal at a Lower Price than did American Marine

Lastly, under Evaluation Criterion D (Rates, Fees and Budget Control), upon information and belief, SGS proposed a lower price than did American Marine. It is well-known in the industry that American Marine's daily rates for a three-person dive team is higher than SGS's. In addition to the clear technical benefits associated with SGS's proposal, American Marine proposed a higher price. To be sure, the current decision erroneously awards this contract to an offeror that has fewer capabilities, increased safety risks, *at a price premium*. Even assuming *arguendo*, the price difference between the two proposals is minimal, there is no reasonable basis to pay *any* price premium for an inferior proposal, particularly where safety is a well-known, legitimate concern. There is no indication that American Marine proposed a lower rate for its dive teams in response to this RFP. Again, while there has been extremely limited transparency into the Harbor Department's evaluation, this allegation can be easily addressed by a proper comparable review of the daily rates for a three-person dive team. If such a review is conducted, it will be clear that American Marine's rates are higher than SGS's.

While price is not the only factor, the Codified Ordinance of County of Los Angeles § 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 CA 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.)

See 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.

V. The Department's Refusal to Produce Relevant, Responsive Documents Obscures the Procurement Process

SGS's Initial Protest was accompanied by two formal California Public Records Act ("CPRA") online requests, submitted on May 9, 2024 and May 23, 2024 for relevant procurement documents. Additionally, SGS's initial protest contained a request for any document that showed the Harbor Department's best value trade-off decision, allowing the award to a higher priced proposal. *See* Ex. C at 20. Notwithstanding SGS's reasonable requests for a minimum level of transparency into the procurement process, the Harbor Department failed to produce a single responsive procurement document. The Agency's failure to provide *any* responsive documents clearly runs afoul of the "fundamental precept of the CPRA" —which is that—"governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so." Summary of the California Public Records act of 2004 at 2, *available at*, https://www.ucop.edu/uc-legal/_files/access-privacy/summary_public_records_act.pdf. Moreover, CPRA also requires that "[w]hen a copy of a record is requested, the agency shall determine within ten days whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor." *Id.* at 5 (emphasis added). To be clear, and despite the fact that SGS's initial document requests were made more than 5 months ago, it has yet to receive an explanation as to why its requested documents were never provided. SGS intends to again seek, through a CPRA request, additional documents related to the initial and current bid protest; any denial of which would similarly be improper.

VI. 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 SGS. Most fatal is its failure to evaluate the contents of the proposals in accordance with the RFP and accepting 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 the Harbor Department provide copies of all relevant documents that relate to the Harbor Department's evaluation of proposals, best value trade-off decision, allowing the award to a higher priced proposal, and decision to award to American Marine instead of SGS. *See* Codified Ordinance of County of Los Angeles § 2.81.960.

CONCLUSION AND REQUEST FOR RELIEF

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

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.
2. Re-evaluate 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. Such other relief as the Harbor Department deems to be appropriate.

Sincerely,

/s/ Kevin P. Simpson

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