



**THE PORT  
OF LOS ANGELES**

Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: MAY 31, 2012**

**FROM: CONSTRUCTION**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ -  
AWARD OF CONSTRUCTION CONTRACT  
CONTRACTOR: HERZOG CONTRACTING CORP.  
BERTH 200 RAIL YARD PROJECT  
SPECIFICATION NO. 2724**

**SUMMARY:**

This contract will relocate the existing Pier "A" Rail Yard to Berth 200 to accommodate expansion of the TraPac terminal at Berths 136-147. The lowest responsive and responsible bidder is Herzog Contracting Corp., located at 600 S. Riverside Rd., St. Joseph, MO 64507. The contract amount plus a 5% contingency is \$94,490,341, and construction is anticipated to start in August 2012 with a contract duration of 720 calendar days. This project has been approved for reimbursement of up to \$78,885,000 in federal, state, and local funds.

**RECOMMENDATION:**

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

1. Find that in accordance with the City Charter Section 1022, work under the subject Contract can be performed more feasibly by an independent contractor rather than by City employees;
2. Reject Shimmick's protest of Herzog Contracting Corp.'s bid based on staff analysis & investigation;
3. Authorize the Executive Director to execute and the Board Secretary to attest to, this contract for, and on behalf of, the Board;

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4. Award the above mentioned contract for Item Nos. 1 through 94 of the bid proposal schedule to Herzog Contracting Corp. in the amount of \$89,990,801; that a 5% contingency not included in the original contract amount be applied for a total authorization of \$94,490,341; and authorize payment from the City of Los Angeles Harbor Department Construction Account. The contract time for performance of the work will be 720 calendar days from the Notice to Proceed;
5. In accordance with City Charter 655 (g), delegate and authorize the Executive Director to adjust final bid quantities and accept the construction contract upon its completion; and
6. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Previous Board Action - On December 6, 2007, the Board certified the Berths 136-147 (TraPac) Container Terminal Project Environmental Impact Report (EIR). This EIR included an on-dock rail yard for TraPac, and the new Berth 200 Rail Yard project. The Berth 200 Rail Yard project will relocate the existing Pier A Rail Yard to the backlands area of Berth 200, allowing the former Pier A Rail Yard land to be used to create an on-dock rail yard for TraPac. On February 17, 2011, the Board approved Resolution Nos. 11-7081 and 11-7082 for prequalification of bidders for construction of the Berth 200 Rail Yard project (Project). Use of prequalified contractors will help ensure the safe, timely, and cost effective completion of the Project.

On July 7, 2011, the Board approved Agreement No. 2995 with Parsons Brinckerhoff, Inc., for construction management services for the Berth 200 Rail Yard project for a three-year term and a maximum compensation of \$4,978,488.

The Berth 200 Rail Yard Project - The Berth 200 Rail Yard project will provide a railroad switching and classification yard for the Union Pacific Railroad, Burlington Northern Santa Fe Railroad Railway, and Pacific Harbor Line Railroad at Berth 200, to replace the existing Pier A Rail Yard. The relocation of the Pier A Rail Yard is necessary to accommodate the expansion of the TraPac terminal at Berths 136-147. The scope of work includes demolition of existing improvements, site preparation, and construction of

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the railroad switching and classification yard. The existing site is currently a vacant lot of approximately 28 acres of paved area surrounded by security fencing to the north, and active railroad mainline and storage yard tracks to the south. The duration of the construction contract is 720 calendar days. Construction is anticipated to start in August 2012 with an anticipated completion date in late 2014. The Project includes the following main components, as shown on the attached Project site map (Transmittal 5):

#### Railroad Track

- Berth 200 Rail Yard (including Yards 1 & 2, engine service tracks and storage tracks): capacity: 511 - 60' cars.
- Main Line Track: approximately 20,000 track-feet.
- Proposed TraPac Terminal On-dock Yard Intermodal Yard Storage Tracks: capacity: 25 - 305' articulated container cars.

#### Railroad Signalization

- Centralized Train Control (CTC) signals for mainline track improvements.

#### Buildings

- Yard Administration Building: approximately 8,100 square feet.
- Locomotive Service Facility: approximately 8,200 square feet.

#### Site Improvements

- Demolition of existing improvements, existing substructure relocation, protection and abandonment, relocation of petroleum pipelines, grading, paving, drainage, lighting, fencing. Coordination of utility removals by others.

Construction Award Process – City of Los Angeles Charter Section 371, Subdivision A – Competitive Bidding sets forth the procedure staff followed to award this contract. For construction contracts such as this one, the City of Los Angeles Harbor Department (Harbor Department) publishes the Notice Inviting Bids in daily newspapers and trade publications circulated in the City of Los Angeles, as well as on the Port of Los Angeles website. The Harbor Department conducts a pre-bid conference and job walk to familiarize the prospective bidders with the jobsite and to answer questions related to the construction contract. Following submittal to the Harbor Department, the bids are publicly opened and the apparent lowest bidder is declared. Bid documents, Disadvantaged Business Enterprise (DBE) participation, and other required documents are reviewed for compliance with Harbor Department and federal funding requirements. Once all information is verified and if the lowest bidder is deemed responsive, recommendation for award of the construction contract is made. If the apparent lowest bidder is found non-responsive, the next lowest bidder is reviewed.

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In accordance with Resolution Nos. 11-7081 and 11-7082 approved by the Board on February 17, 2011, only prequalified prime contractors may submit bids for this Project as a prime contractor, and all railroad track work must be performed by the prime contractor. Also, only prequalified specialty work subcontractors may perform petroleum pipeline relocation and protection, and railroad signalization work for this Project.

- a. Prequalified prime contractors are: Joint Venture of Barnard Construction Company Incorporated and Railroad Construction Company Incorporated; Herzog Contracting Corp.; Kiewit Infrastructure West Company; and Shimmick Construction Company, Incorporated.
- b. Prequalified specialty work (Pipeline) subcontractors are: ARB, Incorporated; Doty Bros Equipment Company; and W.A. Rasic Construction Company, Incorporated.
- c. Prequalified specialty work (Railroad Signalization) subcontractors are: Herzog Technologies, Incorporated; Mass. Electric Construction Company; and Transit Constructors, LP.

The Notice Inviting Bids concerning Specification No. 2724 was advertised on April 5, 2012, on the Port of Los Angeles website, and in the Daily Breeze, Chinese Daily News, Dodge Construction News "Green Sheet", Hoy, and Metropolitan News Company.

As authorized by the Executive Director on February 17, 2011, the Chief Harbor Engineer received 4 bids for the subject contract on May 21, 2012. The Analysis of Bids (Transmittal 1) lists the companies that submitted bids and their respective bid amounts. The bids received were opened and Herzog Contracting Corp. was declared the apparent lowest bidder.

Construction staff has verified Herzog Contracting Corp.'s state license and project references. In conformance with Section 10.8.4 of Ordinance No. 143429, certification is hereby made that Herzog Contracting Corp. has executed and filed an Affirmative Action Plan with their bid. A notification letter has been sent to the City Office of Contract Compliance as required in the ordinance. As such, Herzog Contracting Corp.'s bid has been found responsive. A 5% contingency totaling \$4,499,540 is recommended based on a qualitative review of project specific risks due to potential unforeseen conditions that may arise during demolition, utility conflicts, and design and scope changes to accommodate field conditions and/or tenant's needs.

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Herzog Contracting Corp. has provided the required documents regarding DBE and Underutilized Disadvantaged Business Enterprise (UDBE) participation. Their DBE subcontracting participation level is 16.54%, and their UDBE subcontracting participation level is 15.31% (Transmittal 2). The Harbor Department had set a minimum participation level of 15.6% for DBE, and 7.9% for UDBE for this project.

This contract is consistent with State of California Prevailing Wage provisions. This Project is subject to the terms of the Project Labor Agreement approved by the Board on March 17, 2011 and the Los Angeles City Council on May 11, 2011.

This contract is consistent with State of California Prevailing Wage provisions.

Bid Protest - In a letter dated May 25, 2012, augmented by an email dated May 29, 2012, Shimmick Construction Co., Inc. (Shimmick), the second lowest bidder, submitted a bid protest requesting that the Harbor Department investigate an alleged bid irregularity by Herzog Contracting Corp. (Herzog), the apparent low-bidder. (Transmittal 3).

Shimmick alleges that Herzog's bid does not conform to the specification's 500,000 kilowatt-hour per year performance requirement for the photovoltaic system associated with the maintenance building. Neither Herzog's nor Shimmick's bid itemizes the photovoltaic system cost. Shimmick merely notes that both bids list the same maintenance building subcontractor, Harbor Construction Co., and that Shimmick made a last minute addition of \$1,200,000 to its bid, added to overhead and profit, in order to meet the photovoltaic performance requirement. Shimmick assumed, based on the fact that the maintenance building subcontract amounts were similar, that Herzog did not intend to meet the photovoltaic performance requirement.

In a letter dated May 31, 2012, Herzog Contracting confirmed its intention to comply with the specification's performance requirement of 500,000 kilowatt hours per year and noted that the photovoltaic system is included in its electrical subcontractor's quote and not in the maintenance building subcontractor's quote. (Transmittal 4)

We note that although there was a discrepancy between the performance requirement stated on a drawing and the performance requirement stated in the specification, the contract provides that the specification takes precedence, and further, that the Port's response to contractor question number 251 correctly recited the specification's performance requirement of 500,000 kilowatt-hours per year. We do not believe that these circumstances gave an unfair advantage to Herzog as they did not offer an opportunity for Herzog to withdraw its bid. Therefore, staff, in consultation with the City

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Attorney, has concluded that Herzog's bid should be deemed the lowest responsive, responsible bidder. A response letter to Shimmick was sent on May 31, 2012, rejecting their protest. (Transmittal 3)

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the award of a contract to Herzog Contracting Corp., for construction of the Berth 200 Rail Yard project. The Berth 200 Rail Yard project is an approved element of the TraPac Container Terminal Project EIR certified by the Board in December 2007. As an administrative action for which the underlying Project was previously assessed, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA guidelines.

The Director of Environmental Management has determined that the proposed action involving a contract award for which the underlying activities have been previously assessed is considered exempt from CEQA in accordance with Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Approval of the proposed construction contract authorizes a total of \$94,490,341 (including a 5% contingency) through the fiscal year 2014/2015. Funds for these improvements in the amount of \$35,000,000 have been budgeted in fiscal year 2012/2013 Capital Projects, Account No. 54510, Center No. 1172, Work Order 24885.

It is anticipated that the funds for this contract will be expended as follows:

FY 2012/2013:	\$ 35,000,000
FY 2013/2014:	\$ 42,000,000
<u>FY 2014/2015:</u>	<u>\$ 17,490,341</u>
<b>Total</b>	<b>\$ 94,490,341</b>

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Upon Board approval, funds for future fiscal years will be requested to be budgeted as part of the annual budget process. The total project baseline budget is \$112,510,000 of which \$89,600,000 is budgeted for construction.

This Project has been approved for reimbursement of up to \$78,885,000; \$16,000,000 under the U.S. Department of Transportation Maritime Administration funds, \$40,718,000 under the Trade Corridor Improvement fund, \$8,584,000 under the Regional Surface Transportation program and \$13,553,000 under the Congestion Mitigation & Air Quality program.

Although Herzog Contracting Corp. is not obligated to perform any work under the contract in any fiscal year in which no appropriation for the contract has been made, the Contractor agrees to resume performance of the work required by the contract on the same terms and conditions for a period of 60 days after the end of the fiscal year if an appropriation is approved within that 60-day period. The Contractor is responsible for maintaining all insurance and bonds during this 60-day period. The time for performance shall be extended during this period until the appropriation is made; however, such extension of time is not compensable.

If, in any subsequent fiscal year, funds are not appropriated for work required by the contract, the contract shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

**ECONOMIC BENEFITS:**

Spending under this contract will support 715 direct plus 603 secondary (indirect and induced) jobs in the five-county region.



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**CITY ATTORNEY:**

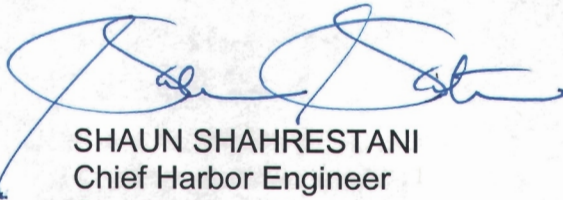
The Office of the City Attorney reviewed and approved Specification No. 2724 as to form and legality on January 18, 2012.

**TRANSMITTALS:**

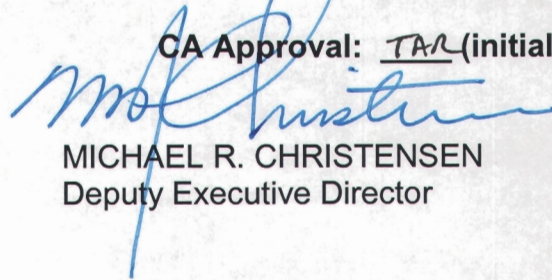
1. Analysis of Bids
2. Contractor and Subcontractor List
3. Letter dated May 25, 2012 from Shimmick
4. Letter dated May 31, 2012 from Herzog
5. Project Site Map

FIS Approval: WR (initials)

CA Approval: TAR (initials)

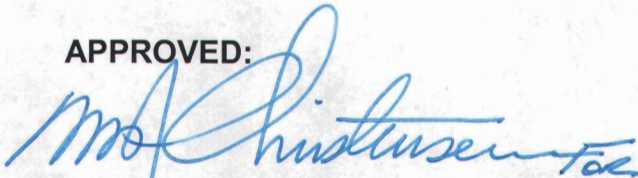


SHAUN SHAHRESTANI  
Chief Harbor Engineer  
Construction Division



MICHAEL R. CHRISTENSEN  
Deputy Executive Director

**APPROVED:**



GERALDINE KNATZ, Ph.D.  
Executive Director

PTN:lh  
2724Award - Author: P. Nguyen

ADP No. 040806-142 Berths 214-215 Alternative Maritime Power (AMP) Retrofit  
ADP No. 071018-201 Berth 304 Substation No. 2 Reconstruction  
ADP No. 091009-121 Berths 401-405 Electrical Modifications