



DATE: JULY 29, 2015

FROM: CONSTRUCTION

**SUBJECT: RESOLUTION NO. _____ -
AWARD AND APPROVAL OF CONSTRUCTION CONTRACT
CONTRACTOR: GGG DEMOLITION, INC.
BERTHS 171-173 ENVIRONMENTAL SITE REMEDIATION
SPECIFICATION NO. 2727**

SUMMARY:

The Berths 171-173 Environmental Site Remediation Project (Project) is required to satisfy a cleanup and abatement order from the California Regional Water Quality Control Board. The Project will remove an estimated 83,000 cubic yards of chemically-impacted soil and replace it with clean fill. The lowest responsive and responsible bidder is GGG Demolition, Inc. located in Orange, California. The contract amount, plus a 10% contingency, is \$23,236,667 and the contract duration is 455 calendar days. This project will be financed through settlements concluded with Kinder Morgan, Texaco, and ConocoPhillips wherein they agreed to reimburse 60%, 25%, and 15%, respectively, of the Harbor Department's costs to remediate the site. Total project cost including pre and post construction costs is \$29,498,699. The Harbor Department may be responsible for up to \$2,699,219 of the total project amount that is not recoverable through the settlement agreements either because of the dollar cap on Kinder Morgan's contribution or the time limits on Texaco's and ConocoPhillips' contributions. The actual amount of the Harbor Department's responsibility will be calculated based on the final construction and post-construction groundwater monitoring costs.

RECOMMENDATION:

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

1. Find that, in accordance with City Charter Section 1022, work under the subject contract can be performed more feasibly by an independent contractor rather than by City employees;
2. Award and approve, subject to Recommendation No. 3 below, Specification No. 2727 for Item Nos. 1 through 44 of the proposal schedule to GGG Demolition, Inc., in the amount of \$21,124,243; that a 10% contingency not included in the original contract amount be added for a total authorization of \$23,236,667; and authorize payment from the City of Los Angeles Harbor Department Harbor Revenue Fund. The contract time for performance of the work will be 455 calendar days from the Notice to Proceed;

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3. Authorize the Executive Director to execute and the Board Secretary to attest to this contract for and on behalf of the Board;
4. In accordance with City Charter Section 655 (g), delegate and authorize the Executive Director to adjust final bid quantities and accept the construction contract upon its completion; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background/Context – On December 4, 2002, the Board approved a Level II Coastal Development Permit (CDP NO.02-37) to decommission and demolish the marine liquid bulk terminal at Berths 171-173. The terminal was demolished in 2003, including 19 above-ground storage tanks, truck loading racks, pumping stations, utility sheds, and an office building.

Although Kinder Morgan demolished the site, contaminated soil and groundwater were not remediated at that time. In 2005, the City of Los Angeles (City) filed a complaint asserting causes of action for nuisance, negligence, breach of contract, and contribution pursuant to the California Water Code section 13304(c)(1) against Kinder Morgan as successor of GATX, which operated the terminal from 1982 to 1999; ConocoPhillips, which operated the terminal from 1968 to 1982; and Texaco, which operated the terminal from 1923 to 1968.

The site is under a Cleanup and Abatement Order No. R4-2008-0006 issued by the Regional Water Quality Control Board in March 2008.

From 2008 to 2013, three settlements were finalized with Texaco, ConocoPhillips, and Kinder Morgan to reimburse costs to investigate, monitor, and remediate Berths 171-173. In 2008, the Board approved Texaco Settlement Agreement 08-2695 and ConocoPhillips Settlement Agreement 08-2696 to reimburse the Harbor Department. The reimbursement commitment from Texaco is 25% of the total costs through June 26, 2018, and from ConocoPhillips it is 15% of the total costs through July 10, 2018. At the Board meeting held on March 7, 2013, the Board approved Settlement Agreement 13-3122 with Kinder Morgan to reimburse the Harbor Department 60% of costs related to remediation; this settlement had no time limit, but set a monetary cap of \$15 million. This means that the Harbor Department will be reimbursed 100% of the remediation costs up to \$25 million, and 40% of any remediation costs over \$25 million (through the Texaco and ConocoPhillips settlements), subject to the sunset clauses in those Agreements.

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On December 18, 2014, the Board approved Resolution No. 14-7729, Issuance of a Level II Non-Appealable Coastal Development Permit (CDP) No.14-17, for the Berths 171-173 Environmental Site Remediation Project (APP No. 140811-099).

The scope of this Project consists of excavating and removing chemically-impacted soil; characterizing stockpiles; "certifying clean" soils to be reused onsite; disposing at offsite treatment/disposal facilities soil that cannot be certified clean; removing light non-aqueous phase liquid (LNAPL) from excavations; placing nutrients at the bottoms of excavations; installing a groundwater treatment piping system; backfill and compaction; importing soil that meets the Port's reuse and import fill criteria and the site-specific cleanup goals; performing surveying; and performing site grading. An aerial site plan showing the limits of the Project can be found in Transmittal 3.

This Project will be constructed in compliance with the City of Los Angeles Harbor Department's (Harbor Department) Small Business/Very Small Business Enterprise Program (SBE/VSBE). This contract is consistent with State of California Prevailing Wage provisions. This Project will be performed under a Project Labor Agreement.

This construction contract is temporary in nature and requires specific experience and equipment to perform the work. As such, it is not feasible for the City of Los Angeles (City) to hire employees and purchase equipment to perform the work under this contract.

Construction Award Process – City of Los Angeles Charter Section 371(a) - Competitive Bidding sets forth the procedure staff followed to award this contract. For construction contracts such as this one, the 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 to familiarize the prospective bidders with the Project 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, SBE and VSBE participation, and other required documents are reviewed for compliance with Harbor Department 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.

In conformance with the City Charter section for competitive bidding, as stated above, the Notice of Inviting Bids for Specification No. 2727 was advertised on November 6,

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2014 on the Port of Los Angeles website, in Dodge Construction "Green Sheet", LA Watt's Times, Daily Breeze, Chinese Daily News, and Metropolitan News Company to reach out to as many potential bidders as possible. A pre-bid meeting was held on November 20, 2014.

As authorized by the Executive Director, the Chief Harbor Engineer received 8 bids for the subject contract on June 10, 2015. The Analysis of Bids (Transmittal 1) lists the companies that submitted bids and their respective bid amounts. The bids received were opened, and GGG Demolition, Inc. was declared the apparent lowest bidder at the time of the bid opening with a bid of \$21,124,243.

Construction staff has verified GGG Demolition, Inc.'s state license. In conformance with Section 10.8.4 of Ordinance No. 143429, certification is hereby made that GGG Demolition, Inc. 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. GGG Demolition, Inc.'s bid has been found responsive. An approximate 10% contingency is recommended based on a qualitative review of project specific tasks, including schedule constraints and potential unforeseen conditions that may arise during construction, utility conflicts and design and scope changes to accommodate field conditions for a total project cost of \$23,236,667.

Harbor Department had set a minimum SBE participation level of 10%, of which 3% shall be VSBE participation. GGG Demolition, Inc. has provided the required documents regarding their SBE and VSBE participation. GGG Demolition, Inc. is a Small Business Enterprise (SBE) and, thereby, achieves an SBE participation level of 100%. For VSBE Subcontractors/Suppliers participation GGG Demolition, Inc. has committed to 18.09% which exceeds the minimum participation level (Transmittal 2). This contract is consistent with State of California Prevailing Wage provisions. This Project is subject to the terms of Project Labor Agreement No. 11-2955, as approved by the Board on March 17, 2011, and the Los Angeles City Council on May 11, 2011.

Bid Protest – In a letter dated June 29, 2015, Sukut Construction's attorney, the second lowest bidder, submitted a bid protest requesting the Harbor Department to find GGG Demolition, Inc.'s bid non-responsive due to bid irregularities, and award the contract to Sukut Construction (Transmittal 4).

Staff, in consultation with the City Attorney, has reviewed the bid protest and has concluded that the claimed inaccuracies did not exist or were inconsequential and therefore, GGG Demolition, Inc.'s bid should be deemed the lowest responsive, responsible bid. A response letter dated July 13, 2015, was sent to Sukut Construction and their attorney (Transmittal 4). Sukut's principal has since indicated that Sukut does not intend to continue the protest.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a construction contract with GGG Demolition, Inc. for construction of the Berths 171-173 Environmental Site Remediation Project. This project was evaluated in a previously prepared Environmental Impact Report (EIR) and certified by the Board on January 8, 1997 (ADP #910117-001) (SCH #91051025). An Addendum was prepared subsequent to the certification of a Final EIR and was approved by the Board on December 4, 2002. Therefore, as an activity for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA), the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II, Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

This board item approves a contract with GGG Demolition, Inc. in the amount of \$21,124,243, plus a 10% contingency of \$2,112,424 for a total not to exceed authorized amount of \$23,236,667. The Harbor Department will pay the expenditures upfront from the available cash balance in the Harbor Department's Harbor Revenue Fund. Simultaneously, a receivable account, General Ledger Account No. 11220, Pollution Cost Recovery Account will be created. The receivable account will capture all expenditures that are reimbursable through the settlement agreements. Cash received in recovery of reimbursable expenses will be deposited back to the cash account of the Harbor Revenue Fund, which will replenish the fund's available cash balance. It is anticipated that expenditures under the contract over the next two fiscal years will be as follows:

Fiscal Year 2015/2016	\$ 13,236,667
Fiscal Year 2016/2017	\$ 10,000,000
Total	\$ 23,236,667

Out of the total contract amount, \$20,537,448 is expected to be recovered and, hence, will be charged to the receivable Account No. 11220 Pollution Cost Recovery Account, Center No. 7000, Program No. 000. As mentioned above, this represents the portion of the contract that will be reimbursed through the settlement agreements. The Harbor Department may be responsible for paying the non-reimbursable portion of the contract totaling \$2,699,219. The final actual amounts reimbursable and those that are non-recoverable will be calculated based on the final construction cost and project completion date. Payments for the non-reimbursable expenditures amounting to \$2,699,219, will be charged to Account No. 21995-Governmental Accounting Standards Board 49 Pollution Remediation Liability Account, Center No. 7000, Program 000.

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Account No. 21995 serves as a reserve account for pollution remediation expenditures and is updated and funded annually according to the amounts needed for pollution remediation transactions.

Although the contractor 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.

Overall Project Cost: At this time, the total cost to remediate the site is estimated at \$29,498,699. This includes pre-construction analysis, design, construction management, environmental investigations and monitoring, administrative coordination with regulatory agencies, post-construction groundwater monitoring and the remediation contract with GGG Demolition, Inc. The table below lists the estimated project costs that are reimbursable:

<u>Description</u>	<u>Reimbursable Cost</u>
Pre-Construction Costs	\$ 5,662,032
Construction Contract	\$ 23,236,667
Post-Construction	
Groundwater Monitoring	\$ 600,000
TOTAL	\$ 29,498,699

Recovery of the reimbursable costs will be partially made through settlement agreements with Kinder Morgan (\$15,000,000), Texaco (\$7,374,675) and ConocoPhillips (\$4,424,805) totaling \$26,799,480. The Harbor Department is responsible for the portion of remediation expenditures that is expected to exceed the cap on Kinder Morgan's contributions, (\$2,699,219).

As of June 30, 2015, the Harbor Department has recovered \$4,898,585 from the responsible parties. Staff will continue to work with the City Attorney's Office to coordinate the reimbursement of remediation expenditures through the settlement agreements.

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ECONOMIC BENEFITS:

Spending under the proposed contract will support 170 direct and 138 secondary one-year equivalent construction-related jobs for a net total of 308 direct and secondary long-term jobs related to operations.

CITY ATTORNEY:

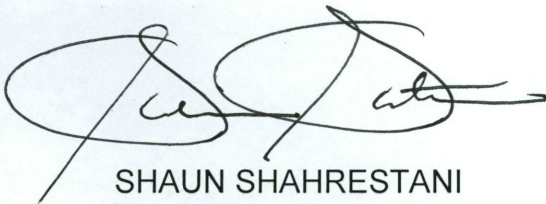
The Office of the City Attorney reviewed and approved Specification No. 2727 as to form and legality on October 30, 2014.

TRANSMITTALS:


1. Analysis of Bids
2. Contractor and Subcontractor List
3. Project Aerial Site Map
4. Protest Letter from Sukut Construction &
Response Letter from the Harbor Department

FIS Approval: MB (initials)

CA Approval: AV (initials)




SHAUN SHAHRESTANI
Chief Harbor Engineer
Construction Division



ANTONIO V. GIOIELLO
Deputy Executive Director

APPROVED:



FOR EUGENE D. SEROKA
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