



Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: FEBRUARY 14, 2013**

**FROM: CONSTRUCTION**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ -  
AWARD AND APPROVAL OF CONSTRUCTION CONTRACT  
CONTRACTOR: SUKUT CONSTRUCTION  
BERTHS 144-145 BACKLAND IMPROVEMENTS  
SPECIFICATION NO. 2750**

**SUMMARY:**

The Berths 144-145 Backland Improvements Project (Project) is part of the phased development of the Berths 136-147 TraPac Container Terminal Improvement Project. The Project will consist of 21 acres of backland improvements, including installation of four rows of infrastructure for automatic stacking cranes infrastructure, grading, paving, storm drain, water and fire protection, rail, fiber optic conduit, electrical and lighting. The lowest responsive and responsible bidder is Sukut Construction located in Santa Ana, California. The contract amount, plus a 10% contingency, is \$42,239,494. The contract duration is 330 calendar days. The Project is partially funded under the Proposition 1B, State Trade Corridor Improvement Fund, through the State of California Department of Transportation, in the amount of \$12,705,000.

**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. Approve proposed Construction Division policy, included in Specification No. 2750, of allowing bidders to provide subcontractor information required by Charter Section 470 (c) (12), at the time of bid or within four business days after the bid opening. If approved, all future construction contracts will include the same policy;
3. Award and approve Specification No. 2750 for Item Nos. 1 through 54 of the proposal schedule to Sukut Construction, in the amount of \$38,399,540; that a 10% contingency not included in the original contract amount be applied for a total authorization of \$42,239,494; and authorize payment from the City of Los Angeles Harbor Department Construction Account. The contract time for performance of the work will be 330 calendar days from the Notice to Proceed;

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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;
5. Authorize the Executive Director to execute, and the Board Secretary to attest to, this contract for and on behalf of the Board; and
6. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background and Context – On December 6, 2007, the Board approved the Berths 136-147 (TraPac) Container Terminal Project Environmental Impact Report (EIR). On June 6, 2012, an addendum to this EIR, for the Berths 144-145 Backland Improvements Project, was approved by the Board. On September 4, 2008, the Board approved a Level III Coastal Development Permit (No. 08-07) for the TraPac Terminal Expansion Project, Berths 136-147.

This Project is part of the overall automated container terminal development program at the TraPac terminal. The scope of this Project consists of construction of 21 acres of container terminal backland. The work includes grading, utilities, (storm drain, sewer, gas, water, and lighting), crane rail, striping, signage, and fencing. It also includes concrete pavement and transtainer runways throughout the terminal, which will accommodate new electric powered transtainer cranes. Transmittal 3 is an aerial site plan showing the limits of the Project.

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 very large 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 and a job walk to familiarize the prospective bidders with the jobsite and to answer questions related to the construction contract.

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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.

The Notice of Inviting Bids for Specification No. 2750 was advertised on December 4, 2012 on the Port of Los Angeles website, in the Daily Breeze, Dodge Construction "Green Sheet", and Metropolitan News Company to reach out to as many potential bidders as possible.

As authorized by the Executive Director on November 16, 2012, the Chief Harbor Engineer received 8 bids for the subject contract on January 24, 2013. The Analysis of Bids (Transmittal 1) lists the companies that submitted bids and their respective bid amounts. The bids received were opened, and Sukut Construction was declared the apparent lowest bidder at the time of the bid opening with a bid of \$38,399,540. A 10% contingency totaling \$3,839,954 is recommended based on a qualitative review of project specific risks, including schedule constraints and potential unforeseen conditions that may arise during construction, potential utility conflicts, and design and scope changes to accommodate field conditions and/or tenant's needs, resulting in a project authorization of \$42,239,494.

Construction staff has verified Sukut Construction's State of California contractor's license and project references. In conformance with Section 10.8.4 of Ordinance No. 143429, certification is hereby made that the contractor 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.

The Harbor Department had set a minimum participation level of 16% for SBE, and a minimum VSBE participation level of 5% for this Project. Sukut Construction has provided the required documents regarding SBE and VSBE participation. Their SBE subcontracting participation level is 20.67%, and their VSBE subcontracting participation level is 6.02% (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.

Proposed Policy Regarding Contract Solicitations Charter Section 470 (c) (12) - Bidders who submit bids for Harbor Department construction contracts are subject to Charter Section 470 (c) (12) and related ordinances. As a result, bidders may not make campaign contributions to and or engage in fundraising for certain elected City officials

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or candidates for elected City office from the time they submit the bid until either the contract is signed by the City of Los Angeles, or the bid is withdrawn by the bidder, or the City rejects all bids, whichever occurs first. The prohibitions continue for 12 months after the contract is signed by the City for successful bidder, and principals, subcontractors of at least \$100,000, and principals of such subcontractors.

Bidders must submit City Ethics Commission (CEC) Form 55 at the time of bid. The form requires bidders to identify their principals, their subcontractors performing \$100,000 or more in work on the contract, and the principals of those subcontractors. Bidders shall also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Bids submitted without a signed CEC Form 55 will be deemed non-responsive.

Ever since this requirement has been included in Harbor Department Construction Specifications, approximately six months ago, staff has received numerous complaints from bidders stating that the requirement of providing complete information on subcontractors and principals of subcontractors on CEC Form 55 at the time of bid creates significant burdens and leads to errors in completing bids. Bidders almost always are receiving bids from potential subcontractors until immediately before the bid deadline and will not know the final list of subcontractors until the last minutes. Typically, bidders receive several bids for every portion of the work that the bidder sets aside for subcontracting. For a contract that may have 10 subcontractors, the bidder may receive 50 to 100 subcontract bids that bidder must evaluate and select just before the time of bid opening. Right before the bid deadline, in addition to completely and accurately completing the bid proposal and other forms, bidders must now also complete the CEC Form 55 including identifying subcontractors and their principals. Contractors have identified this added last minute pressure as the cause of incomplete bids that have been received by the Harbor Department in the past few months, leading to rejection of otherwise low bids, or the need for Board to waive informalities.

To address these bidder concerns and help ensure the Harbor Department receives the best and most competitive bids, staff has consulted with the City Attorney's Office and proposes modified construction specification language that: (1) still requires bidders to provide the required information for their own firm and sign the CEC Form 55 at the time of bid, (2) but allows bidders to provide the subcontractor information required by Charter Section 470 (c) (12) at the time of bid or within four business days after the bid opening. It is important to note that bidders and their subcontractors are governed by the prohibitions in Charter Section 470 (c) (12) even without signing the CEC Form 55, and therefore must comply with the law even in the four business days before complete subcontractor information may be provided, and if the bidder fails to provide the remaining subcontractor information within the four business days after bid opening, it will be deemed non-responsive. The language for this proposed policy was included in

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Specification No. 2750. If approved, all future construction contracts will include the same policy.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval to issue a contract to Sukut Construction for construction of the Berths 144-145 Backland Improvements project. The Project was assessed as part of the Berths 136-147 [TraPac] Container Terminal Project Environmental Impact Statement/Environmental Impact Report (ADP No. 030127-020, SCH No. 2003104005) which was certified by the Board on December 6, 2007. As an activity for which the underlying project had 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 III Section 2 (i) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Approval of the proposed construction contract authorizes a total of \$42,239,494 through Fiscal Year 2013/2014. Funds are expected to be expended as follows over the next two fiscal years have been budgeted in Capital Budget, Account No. 54510, Center No. 1103, Program No. 000:

Fiscal Year 2012/2013	\$ 2,000,000
Fiscal Year 2013/2014	<u>\$ 40,239,494</u>
<b>Total</b>	<b>\$ 42,239,494</b>

Funds for future fiscal years will be requested to be budgeted as part of the annual budget process. The total baseline budget of \$365,000,000 for the TraPac program was approved by the Board on April 19, 2012, of which \$143,000,000 has been expended to date. Approval of this contract will not require an increase in the total baseline budget. TraPac is responsible for all costs associated with the maintenance of improvements under this contract.

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

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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.

The operation and maintenance cost after construction will be borne by the terminal operator.

**ECONOMIC BENEFITS:**

Spending under the proposed contract will support approximately 308 direct and 252 secondary one-year equivalent jobs for the five-county region.

**CITY ATTORNEY:**

The Office of the City Attorney reviewed and approved Specification No. 2750, including proposed policy regarding Charter Section 470 (c) (12), as to form and legality on November 19, 2012.

**TRANSMITTALS:**

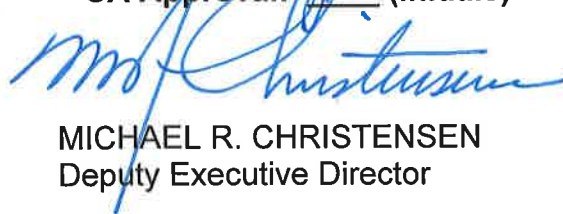
1. Analysis of Bids
2. Contractor and Subcontractor List
3. Project Aerial Site Map



SHAUN SHAHRESTANI  
Chief Harbor Engineer  
Construction Division

FIS Approval:  (initials)

CA Approval:  (initials)



MICHAEL R. CHRISTENSEN  
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.  
Executive Director

KH:lh  
2750B01