

RESOLUTION 20xx-xxx**RESOLUTION REJECTING BID PROTEST FROM
ABHE & SVOBODA INC. REGARDING THE AWARD
OF CONTRACT NO. 2020-15 TO REYES
CONSTRUCTION INC.**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Act); and

WHEREAS, in 2015, the District commissioned a structural inspection of Navy Pier as part of a structural condition assessment to determine current conditions and document recommendations for future repair and maintenance through the Asset Management Program (AMP) and the AMP identified Navy Pier as a priority facility and provided recommended maintenance repairs over a five-year planning period based on deterioration levels of the primary structural elements; and

WHEREAS, the most recent repair project in 2018, Structural Repairs to Navy Pier Project, was the first project in the AMP five-year maintenance plan which was focused on the most severely deteriorated structural elements by performing repairs on concrete piles, underdeck concrete beams, pile cap structures, concrete soffits, and fender system replacement at the west end of Navy Pier and construction was completed in 2019 under the Major Maintenance Program; and

WHEREAS, the Structural Pile Repairs to Navy Pier Project represents the second project of the AMP five-year maintenance plan which addresses the 1928 era piles and remaining deteriorated structural elements; and

WHEREAS, the plans and specifications for the second project of the AMP five-year maintenance plan define the contract work that includes furnishing all labor, materials, equipment, systems, and disposal as necessary to complete pre-construction surveys, full length encasement of 20-inch square concrete piles; relocation and reinstallation of large rocks at locations on underwater slope where it interferes with pile encasement; removal and disposal of pipe debris; concrete repair of beams, pile caps, pile tops, soffit, low caps, and retaining walls; epoxy-injection repair of miscellaneous cracks under deck of the Navy Pier; and

20xx-xxx

WHEREAS, the Contract Documents, including plans EM-2020-03 and Specifications 2020-15, were issued for a total bid period duration of 47 calendar days starting on January 13, 2022; and

WHEREAS, on March 1, 2022, a total of ten (10) bids were received; however, three (3) bids were deemed non-responsive; and

WHEREAS, seven (7) out of the ten (10) bids were deemed responsive with bid amounts ranging from \$10,081,700 to \$19,999,701; and

WHEREAS, the seven (7) responsive bids are listed in Attachment C to the corresponding agenda report; and

WHEREAS, based on review of the bids by representatives of the District's Procurement Department, the lowest responsive and responsible bid was determined to be submitted by Reyes Construction, Inc. at \$10,081,700 and staff is recommending the BPC award Contract 2020-15 to Reyes Construction, Inc.; and

WHEREAS, lowest bidder, Abhe & Svoboda Inc., has protested claiming the award of Contract No. 2020-15 to Reyes Construction, Inc. or any other bidder, is improper and unlawful under California law. Abhe & Svoboda Inc. has protested against the award on the following grounds: (1) Abhe & Svoboda Inc.'s bid was the lowest responsive and responsible bidder; (2) Abhe & Svoboda Inc.'s bid materially complied with the bidding instructions and specifications; and (3) the clerical error in the electronic submission was a technicality that afforded Abhe & Svoboda Inc. no competitive advantage over other bidders; and

WHEREAS, Reyes Construction Inc. responded to Abhe & Svoboda Inc.'s protest stating that Abhe & Svoboda Inc.'s failure to include the Bidder's Statement of Experience in the original electronic submission was a material failure and was not-waivable since that would give Abhe & Svoboda Inc. an unfair advantage by giving it the option of waiting to see if it was the lowest bid, and then deciding whether to submit the required information or walk away from the bid without forfeiting its bid bond by not submitting the required information; and

WHEREAS, Abhe & Svoboda Inc. submitted two replies; and

WHEREAS, Abhe & Svoboda Inc. failed to submit their Bidder's Statement of Experience (no qualifying project information was provided) electronically before the due date as specified in the Bid Proposal Package and the Bid Proposal Package state that all Bidders were required to submit a completed Bid Proposal Package in its entirety electronically prior to the bid. Instead, Abhe & Svoboda submitted their Bidder's Statement of Experience with their hard copy bid proposal package the day after the original electronic bids were due; and

WHEREAS, staff deemed Abhe & Svoboda Inc. non-responsive due to their

20xx-xxx

non-compliance in the electronic submission of their Bidder's Statement of Experience as specified in the bidding instructions and specifications; and

WHEREAS, while the bid documents reserve the right for the District to waive an informality in a bid, staff does not recommend the Board of Port Commissioners waive such; and

WHEREAS, staff recommends rejection of the protest by Abhe & Svoboda Inc.

NOW THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, does hereby reject the bid protest from Abhe & Svoboda Inc. regarding the award of Contract No. 2020-15 to Reyes Construction, Inc.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of April 2022, by the following vote: