



## Legislation Details (With Text)

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**Title:** A) RESOLUTION APPROVING A PROJECT BUDGET INCREASE OF \$425,000 FOR THE DEFERRED MAINTENANCE - SEAPORT VILLAGE PROJECT PURSUANT TO BPC POLICY NO. 130.

B) Resolution rejecting bid protest from erc roofing & waterproofing against urban corps of san diego county.

C) RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AWARDED CONTRACT NO 2019-17 TO URBAN CORPS OF SAN DIEGO COUNTY IN THE AMOUNT OF \$598,397.00 FOR THE MAINTENANCE REPAIRS AT VARIOUS SEAPORT VILLAGE BUILDINGS PROJECT (BID SCHEDULES A, B AND C), A SUBPROJECT OF THE DEFERRED MAINTENANCE - SEAPORT VILLAGE PROJECT, AS AUTHORIZED BY THE BOARD IN THE FY 2020 MAJOR MAINTENANCE PROGRAM.

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2/11/2020	1	Board of Port Commissioners	adopted	Pass
2/11/2020	1	Board of Port Commissioners	adopted	Pass

**DATE:** February 11, 2020

**SUBJECT: DEFERRED MAINTENANCE - SEAPORT VILLAGE**

- A) RESOLUTION APPROVING A PROJECT BUDGET INCREASE OF \$425,000 FOR THE DEFERRED MAINTENANCE - SEAPORT VILLAGE PROJECT PURSUANT TO BPC POLICY NO. 130.**
- B) RESOLUTION REJECTING BID PROTEST FROM ERC ROOFING & WATERPROOFING AGAINST URBAN CORPS OF SAN DIEGO COUNTY.**
- C) RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AWARDED CONTRACT NO 2019-17 TO URBAN CORPS OF SAN DIEGO COUNTY IN THE AMOUNT OF \$598,397.00 FOR THE MAINTENANCE REPAIRS AT VARIOUS SEAPORT VILLAGE BUILDINGS PROJECT (BID SCHEDULES A, B AND C), A SUBPROJECT OF THE DEFERRED MAINTENANCE - SEAPORT VILLAGE PROJECT, AS AUTHORIZED BY THE BOARD IN THE FY 2020 MAJOR MAINTENANCE PROGRAM.**

## **EXECUTIVE SUMMARY:**

Staff recommends that the San Diego Unified Port District (District) Board of Port Commissioners (Board):

1. Approve a \$425,000 increase in the Deferred Maintenance - Seaport Village Project budget to allow for (1) recent additions to the Maintenance Repairs at Various Seaport Village Buildings Project (Seaport Village Maintenance Subproject), including (a) asbestos abatement and (b) painting, and (2) the anticipated cost to complete two other subprojects. The budget increase will be transferred from contingency and project savings within the FY 2020 Major Maintenance Capital Budget.
2. Reject the bid protest received from ERC Roofing & Waterproofing against Urban Corps of San Diego County.
3. Approve plans and specifications and authorize the award of a construction contract to Urban Corps of San Diego County in the amount of \$598,397.00 for the Seaport Village Maintenance Subproject, to be paid from the Deferred Maintenance - Seaport Village budget (see Attachment A - Location Map).

The Deferred Maintenance - Seaport Village Project approved by the Board in the Major Maintenance Capital program is divided into three (3) subprojects based on the variety of trades needed for the repairs. The three (3) subprojects are the following: Maintenance Repairs at Various Seaport Village Buildings (the Seaport Village Maintenance Subproject); Mechanical, Electrical and Plumbing Repairs at Various Seaport Village Buildings; and Overwater Platform Repairs at Seaport Village Café. The Seaport Village Maintenance Subproject is the first of three contracts planned for award in FY 2020 for improvements at Seaport Village.

The plans and specifications for the first subproject (the Seaport Village Maintenance Subproject) define the contract work as including replacement of the existing wood roof shingles to new asphalt roof shingles, exterior painting, and miscellaneous carpentry repairs on various Seaport Village buildings. These repairs are a necessary component of owning and operating a specialty retail shopping center and ensuring that Seaport Village has continued success for tenants and is enjoyed by visitors and the general public.

On January 15, 2020, the District received four (4) bids ranging from \$529,442.60 to \$1,826,128.00. Three (3) of the bids are listed in Attachment B. The apparent low bidder withdrew their bid due to a clerical error. The withdrawal was done in a timely manner in accordance with Public Contract Code Section 5103. The lowest responsive and responsible bid was submitted by Urban Corps of San Diego County in the amount of \$598,397.00. Award to this bidder is recommended.

ERC Roofing & Waterproofing, the third lowest bidder, timely submitted a protest of the two lowest bidder's bids. As the original low bidder withdrew its bid, ERC Roofing & Waterproofing's protest of its bid is moot. As discussed below, ERC Roofing & Waterproofing's protest of Urban Corps of San Diego County's bid is without merit and, as recommended by staff, should be rejected.

## **RECOMMENDATION:**

- A) Adopt a resolution approving a project budget increase of \$425,000 for the Deferred Maintenance - Seaport Village Project pursuant to BPC Policy No. 130.
- B) Adopt a resolution rejecting bid protest from ERC Roofing & Waterproofing against Urban Corps of San Diego County.
- C) Adopt a resolution approving plans and specifications, and awarding Contract No. 2019-17 (Bid Schedules A, B and C) to Urban Corps of San Diego County in the amount of \$598,397.00 for the Maintenance Repairs at Various Seaport Village Buildings Project, a subproject of the Deferred Maintenance - Seaport Village Project, as authorized by the Board in the FY 2020 Major Maintenance program.

**FISCAL IMPACT:**

Approval of Resolution A will have no fiscal impact to the District. Approval of this agenda item will authorize a project budget increase of \$425,000, from \$700,000 to \$1,125,000. The \$425,000 budget increase will be funded from within the FY 2020 Major Maintenance Capital appropriation. Funds will be transferred within Major Maintenance Capital from contingency and project savings pursuant to BPC Policy No. 90.

Approval of Resolution B will have no fiscal impact to the District because it is rejecting a bid protest from ERC Roofing & Waterproofing.

Approval of Resolution C will have no fiscal impact because the funds used to pay the award have already been budgeted in the FY 2020 Major Maintenance Capital appropriation.

**COMPASS STRATEGIC GOALS:**

Award of this construction contract will implement the Major Maintenance program, approved by the Board to be in alignment with the District's vision, mission and strategic goals.

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

**DISCUSSION:**

***Item No. 1 - Project Budget Increase of \$425,000***

The Deferred Maintenance - Seaport Village Project has an approved budget of \$700,000 in the FY 2020 Major Maintenance Capital program. Based on the variety of trades involved in the repairs, the Deferred Maintenance - Seaport Village Project is divided into three (3) subprojects. The subprojects are the following: Maintenance Repairs at Various Seaport Village Buildings (which is the subject of this agenda); Mechanical, Electrical and Plumbing Repairs at Various Seaport Village Buildings (currently in design); and Overwater Platform Repairs at Seaport Village Café (currently in procurement).

Based on the bids received for the first subproject - the Seaport Village Maintenance Subproject - and the cost estimates for the other two (2) subprojects, staff recommends a budget increase of

\$425,000 to complete the work contemplated for the Deferred Maintenance - Seaport Village Project. A breakdown of the budget increase is provided in Table #1.

Table #1 - Deferred Maintenance - Seaport Village Project Budget

Project Tasks	Approved Budget	Budget Breakdown	Additional Amount Required to Complete the Project	Recommended Revised Budget
Soft Costs		\$151,376	\$30,000	
Construction		\$525,000	\$298,397	
Contingency		\$23,624	\$96,603	
Totals	\$700,000	\$700,000	\$425,000	\$1,125,000

**Items Nos. 2 (Reject ERC Roofing & Waterproofing’s Bid Protest) & 3 (Approving Plans and Specifications, and Awarding Contract to Urban Corps of San Diego County)**

The goal of this subproject, the Seaport Village Maintenance Subproject, is to perform exterior building maintenance and roof repairs of various Seaport Village buildings.

During the design phase of the Seaport Village Maintenance Subproject, the presence of asbestos containing materials (ACM) were found in the existing roofing systems. It was also determined that by painting the remainder of the existing buildings, the District could influence the demand for retail space by increasing the attractiveness of Seaport Village as a visitor destination. This additional scope is the reason for the requested budget increase.

This subproject includes the following work:

Base Bid (Bid Schedule A) - Roof Repairs. The work includes the replacement of approximately 23,310 square feet of existing cedar wood roof shingles/shakes with asphalt roof shingles in various buildings (Building Nos: #7 ,#8, #11, #21, #22, #23 and #30; Attachment A - Location Map); replacement of broken clay roof tiles; proper removal and disposal of asbestos containing materials (roof underlayment for the existing wood shingles/shake roofing); and other miscellaneous roof repairs.

Base Bid (Bid Schedule B) - Miscellaneous Building Repairs. The work includes replacement of some windows and frames, facia, wall sidings, portions of wooden decks, joists, beams, doors, guardrails, stucco crack and hole repairs and other carpentry repair work of various Seaport Village buildings; complete exterior painting of Buildings Nos. #3, #10, #18, #19, and #30 (Attachment A - Location Map); and application of wood stain with sealer on the exterior of buildings #8, #11, and #29 (Attachment A - Location Map).

Additive Bid (Bid Schedule C) - Additional Building Exterior Painting. The work includes exterior painting of Buildings #1, #2, #4, #9, #12, #14, #15, #16, #17, #21, #23 and #24 (Attachment A - Location Map).

The work will be coordinated with Seaport Village tenants to minimize disruption to their business. All businesses are expected to remain open during construction.

The contract documents were prepared using an additive bid schedule. This was done to allow the District some flexibility and choice in the work to be awarded based on bid results. Since the total of all bid schedules are in alignment with the engineer's construction cost estimate, staff recommends awarding all bid schedules.

**Bid Process**

Construction bid documents, including plans and specifications for Contract No. 2019-17 (Drawing No. EM-2019-04 and EM-2019-05; Project No. MC-0072-01) were issued for advertisement on December 16, 2019. Four (4) bids were received on the bid opening date - January 15, 2020, ranging from \$529,442.60 to \$1,826,128.00.

The bid amounts are shown in Table #2.

Table #2 - Tabulation of Bids

Company	Bid Schedule A + Bid Schedule B (Base Bids)	Bid Schedule C (Additive Bid)	Total Bid (Bid Schedules A+B+C)
TL Veterans Construction, Inc.	\$412,827.60	\$119,615.00	\$529,442.60
Urban Corps of San Diego County	\$477,522.00	\$120,875.00	\$598,397.00
ERC Roofing & Waterproofing	\$1,163,591.70	\$389,740.00	\$1,553,331.70
Commercial & Industrial Roofing	\$1,355,513.00	\$470,615.00	\$1,826,128.00

TL Veterans Construction Inc., the apparent low bidder, withdrew their bid in a timely manner due to clerical error consistent with the Public Contract Code Section 5103. Therefore, TL Veterans Construction Inc.'s bid is not discussed further.

Based on a review of the bids, the lowest responsive and responsible bid was determined to be submitted by Urban Corps of San Diego County (Urban Corps) at \$598,397.00. The engineer's construction cost estimate for the work was \$585,000 (Bid Schedules A, B, and C). ERC Roofing & Waterproofing was the next lowest bidder, with a bid of \$1,533,331.70.

**ERC Roofing & Waterproofing's Bid Protest**

The third lowest bidder, ERC Roofing & Waterproofing (ERC), protested both (1) TL Veterans Construction Inc.'s bid and (2) Urban Corps' bid (Attachments C and D). Because TL Veterans Construction Inc. timely withdrew its bid, ERC's bid protest of TL Veterans Construction Inc.'s bid is moot.

With respect to Urban Corps' bid, ERC claims that one of Urban Corps' listed subcontractors, Ruttkay Development Corp. (Ruttkay) may not perform the work identified - (1) installation of asphalt singles roof system and (2) painting - because the work requires a specialty license per California Business & Professions Code Section 7057(b).

Staff recommends that the Board reject ERC's protest. Staff believes that ERC's interpretation of Business & Professions Code (B&P Code) Section 7057(b) is incorrect, and that Ruttkay may properly take the subcontract and perform the roofing and painting work.

B&P Code Section 7057(b) states "A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification." ERC argues that, under B&P Code Section 7057(b), Ruttkay (a licensed general contractor) cannot perform the subcontracted roofing and painting work specified in the Urban Corps' bid because Ruttkay is not also performing framing or carpentry work.

B&P Code Section 7057(b) permits Ruttkay to take the subcontract. The section allows a licensed general contractor, such as Ruttkay, to take a subcontract that includes two unrelated trades, provided neither of those trades are framing or carpentry. (If framing or carpentry is part of the work under the subcontract, a general contractor may only take the subcontract if it also has two other unrelated trades or crafts.) The California Contractor's State License Board's published "Fast Facts" (Attachment E) on B&P Code Section 7057(b), which clarifies the limitations of that section, explain that a general contractor can enter into a subcontract "for two or more separate and unrelated trades and self-perform the work (framing and carpentry cannot count as one of the trades).

Here, Ruttkay is not performing framing and carpentry work. The subcontract is for roofing and painting, which are two separate and unrelated trades or crafts. B&P Code Section 7057(b) permits Ruttkay to take the subcontract and staff recommends that the Board reject ERC's bid protest.

### Urban Corps Bid

As discussed above, Urban Corps' bid was the lowest responsive and responsible bid received. Urban Corps provides underserved young adults through a unique work-learn program the opportunity to gain paid work experience to learn job skills while finishing high school at the same time.

Upon Board authorization, construction is expected to commence in March 2020 and will be completed by June 2020.

Staff recommends that the Board approve plans and specifications, and award Contract No. 2019-17, Maintenance Repairs at Various Seaport Village Buildings Project to Urban Corps in the amount of \$598,397.00.

### **General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments, as presented to it, and approves them as to form and legality.

### **Environmental Review:**

The proposed Board action, including without limitation, a resolution approving a transfer of funds for maintenance repairs at Seaport Village, a resolution rejecting a bid protest, and a resolution approving plans and specifications and awarding a contract for maintenance repairs at Seaport Village is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities) and/or 15302 (Replacement or Reconstruction) and Sections 3.a.(3), 3.a.(5), 3.a.(7) and 3.b. of the District's Guidelines for Compliance with CEQA because the project would consist of maintenance repairs to an existing retail facility that would involve negligible or no expansion of use, be located on the same site, and have substantially the same purpose and capacity. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). A CEQA Exemption was previously issued for this project on November 8, 2019. The proposed project is consistent with the project analyzed in the Categorical Exemption. The proposed Board action is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the proposed Board action is merely a step-in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

In addition, the proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its power, and the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

Finally, the proposed Board action is considered "excluded development" pursuant to Sections 8.a.(2) (Existing Facilities) and 8.b. (Replacement or Reconstruction) of the District's Coastal Development Permit Regulations because the project would consist of maintenance repairs to an existing retail facility that would involve negligible or no expansion of use, be located essentially on the same site, and have substantially the same purpose and capacity. A "Coastal Act Categorical Determination of Exclusion" was previously issued for this project on November 8, 2019; therefore, issuance of a Coastal Development Permit or subsequent Exclusion is not required for the proposed Board action.

### **Equal Opportunity Program:**

A 4% SBE goal was established for this contract opportunity. One (1) SBE bid was received for an estimated 15.3% SBE participation.

### **PREPARED BY:**

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Attachment(s):

Attachment A: Location Map

Attachment B: Tabulation of Bids

Attachment C: ERC's Bid Protest for Repairs at Various Seaport Village Buildings dated  
01/29/2020

Attachment D: ERC's Bid Protest for Repairs at Various Seaport Village Buildings dated  
02/06/2020

Attachment E: Contractors State License Board Fast Facts (B General Building Contractor  
License)