



Legislation Text

File #: 2019-0270, **Version:** 1

DATE: October 8, 2019

SUBJECT:

RESOLUTION CONSENTING TO ASSIGNMENT AND ASSUMPTION OF AS NEEDED MARINE STRUCTURAL ENGINEERING AGREEMENT NO. 193-2016AC FROM BERGERABAM, INC. TO WSP USA, INC. DUE TO AN ACQUISITION AND MERGER

EXECUTIVE SUMMARY:

On December 13, 2016, the Board of Port Commissioners awarded the As Needed Marine Structural Engineering Agreement No. 193-2016AC to BergerABAM, Inc. On May 1, 2019, WSP USA, Inc. acquired and merged with BergerABAM, Inc.

In order to continue to receive professional marine structural engineering and design services from BergerABAM, the District will need the agreement signed by the new legal entity WSP USA, Inc.

RECOMMENDATION:

Adopt a Resolution Consenting to Assignment and Assumption of As Needed Marine Structural Engineering Agreement No. 193-2016AC from BergerABAM, Inc. to WSP USA, Inc.

FISCAL IMPACT:

The proposed Board action would have no additional fiscal impact to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goals by publicly approving an assignment and assumption agreement and maintaining an agreement with a qualified firm for design and engineering services to maintain and improve its seaport facilities:

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.

DISCUSSION:

The Engineering/Construction Department supplements its in-house staff with professional consultant firms that provide specific technical expertise and engineering/design services. Marine structural engineering and design services are needed to maintain and improve the District's maritime facilities.

On December 13, 2016, the Board of Port Commissioners awarded the As Needed Marine Structural Engineering Agreement No. 193-2016AC to BergerABAM, Inc. On May 1, 2019, WSP USA, Inc. acquired and merged with BergerABAM, Inc.

WSP USA, Inc. is an engineering company that is well qualified and offers similar services as BergerABAM, Inc. In order to continue to receive professional marine structural engineering and design services from BergerABAM, the District will need the agreement signed by the new legal entity WSP USA, Inc. The assignment is not anticipated to have any effect on District projects or timelines.

The District will be working with the same professional personnel from BergerABAM and supplemented by qualified staff from WSP USA, Inc. Therefore, staff recommends this assignment and assumption of the District's agreement to WSP USA, Inc.

General Counsel's Comments:

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

Environmental Review:

The proposed Board action, including without limitation, consenting to assignment and assumption of an as-needed marine structural engineering agreement, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board's action or direction that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, the proposed Board action complies with Sections 21, 35, and 81 of the Port Act, which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its powers, and for the use District funds for expenses of conducting the District. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified

CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction or action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachments:

Attachment A: Agreement with BergerABAM, Inc. - 193-2016AC

Attachment B: Assignment with WSP USA Inc. Assumption Agreement - 193-2016AC